

## **I) BACKGROUND INFORMATION: STATE SERVICES SECTION.**

Collectively, the attorneys in the State Services section provide representation to eight of sixteen executive branch state agencies, as well as Colorado's five statewide elected public officials, the Governor, Lt. Governor, Attorney General, Secretary of State and Treasurer. The Section also represents the Judiciary and the Public Utilities Commission. The legal work of the Section is diverse, ranging from providing advice on transactions and general operations to defending the constitutionality of state laws in both state and federal court. In general, the State Services Section protects children, people at risk, and represents the public at large. The Section also conserves the state's fiscal system by reviewing hundreds of state contracts and defending the State against claims typically involving the inadequacy of funding of various programs.

The primary metric is the volume of cases handled by each unit. For some units, additional workload measures are provided. We caution, however, that a single case, such as the Lobato School Finance trial and appeal may involve thousands of hours of legal work and other cases can be disposed of with minimal time.

The Section is composed of the following units:

### **Human Services:**

This Unit represents the Department of Human Services both defending the Department in civil litigation and prosecuting on its behalf in the administrative courts. The Unit defends the county confirmation that a person is responsible for child abuse or neglect in administrative appeals. The unit prosecutes licensure actions to revoke or discipline child care providers who harm children or do not follow requirements. Attorneys represent the Division of Youth Corrections requesting early parole or community placement for aggravated offenders or extensions of commitment for youth who are a risk to the community. The unit files motions to quash record subpoenas and assists with open records requests. The Unit regularly provides general legal counsel to various Divisions within the Department, including: Behavioral Health, the Mental Health Institutes, the Regional Centers for Persons with Development Disabilities, Colorado Works, Food Assistance, Child Support Enforcement and Vocational Rehabilitation. The Unit assists with transactional issues, including contract review and drafting, tax disputes, and property transactions. Lastly, the Unit represents the State Long Term Care Ombudsman and the Child Welfare Ombudsman.

**Health Care:**

This Unit represents the health programs of the Colorado Department of Public Health and Environment, including the division that licenses and surveys all health facilities in the state, sets standards and level of care for hospital emergency departments and trauma units, and certifies emergency medical service providers. The Unit also represents the Prevention Services Division, Disease Control and Environmental Epidemiology Division, the State Laboratory, and the Registrar of Vital Statistics within CDPHE, which includes the Medical Marijuana Registry and manages birth, death, marriage and adoption records. The Unit represents the Department of Health Care Policy and Financing, which administers Medicaid, the Colorado Indigent Care Program and the Children's Basic Health Plan. The Unit's representation includes eligibility issues, Medicaid provider appeals, recipient appeals, judicial review actions, collection of overpayments and amounts owed Medicaid by providers and liable third-parties. In addition, the Unit reviews rules for and provides counsel to the Colorado Board of Health and the Colorado Medical Services Board.

**Labor/Personnel and Administration:**

This Unit represents the Department of Labor and Employment, which involves mainly workers compensation, unemployment compensation, and petroleum storage tank monitoring and cleanup. In addition, the Unit does the legal work for the Department of Personnel and Administration, including the Personnel Director, employee benefit programs, state buildings, and purchasing. The Unit also advises the Colorado State Controller and reviews hundreds of contracts annually for legal sufficiency.

**Education:**

This Unit advises all of state's public colleges and universities, and the community college system, on a wide range of state and federal compliance issues, board governance, and transactional matters. In addition, the Unit represents the State Board of Education and the Department of Education on a wide variety of issues, including charter school appeals, general policy questions, and in the prosecution of teacher licensure cases. The Unit provides general legal advice to the Colorado State Charter School Institute, the BEST (Building Excellent Schools Today) Board, and the Department of Higher Education, including the Division of Private Occupational Schools, the Colorado Historical Society, and the Commission on Higher Education. The

Unit regularly defends state education laws and the system of public school finance against constitutional challenges.

**Public Officials:**

This Unit provides legal advice to the Governor, Lt. Governor, Secretary of State (election and campaign finance law), the Treasurer, the Attorney General, and the Judicial Department, as well as the Department of Local Affairs, the Department of Military Affairs, the Office of Economic Development and International Trade, the Office of Information Technology, the State Auditor, the License Plate Auction Group, and the Title Board. The Unit handles constitutional challenges to some state laws and initiated measures adopted by the voters.

**Public Utilities Commission (PUC):**

This Unit represents the three commissioners of the PUC and its staff in an advisory (general counsel) capacity. The PUC Unit provides legal advice and writes orders in a wide variety of quasi-judicial and quasi-legislative proceedings, including rulemaking proceedings, conducted before the Commission. These proceedings address energy, telecommunications, and transportation regulation for the state. The PUC Unit also advises and represents the PUC on legislative matters and in state and federal court.

## **II) PRIOR YEAR LEGISLATION**

### **Human Services**

**SB 14-1317: Concerning Modifications to the Colorado Child Care Assistance Program, and, In Connection Therewith, Aligning Eligibility and Authorization; Addressing Affordability by Reducing Copayment; Improving Provider Reimbursement Rates; Increasing Access to Quality Care; Improving Technology, Infrastructure, and Administration; and Making an Appropriation.** The Department has until July 1, 2016 to establish provider reimbursement rates that are tiered, and the Department will conduct a study to examine private payment tuition rates and how those compare to CCAP. This bill contains the phrase “subject to available appropriations” no less than seven times. The bill requires that counties provide CCAP assistance to families whose income is not more than 165% of the federal poverty level. Families transitioning off the Works program, if eligible, may be provided low-income child care without applying until six months after the transition. Participants must pay a portion of their income for CCAP. The bill requires changes to the automated tracking system, such as tracking a parent who is not employed for sixty days within a 12 month period. A provider may conduct a pre-eligibility determination and accept the child for services while the County determines eligibility. If found ineligible, the County will not reimburse for the child care provided.

**HB 14-1368: Concerning the Transition of Youth Ages Eighteen Through Twenty-One Who have Intellectual and Developmental Disabilities to the Adult Program of Services for Persons with Intellectual and Developmental Disabilities, and In Connection Therewith, Making and Reducing Appropriations.** Youth ages 18 to 21 were previously served through the County Child Welfare System, and the home-and community-based services (HCBS) program is better designed to meet the needs of those with intellectual and developmental disabilities. These youth are to be transitioned from the child welfare system into the HCBS system, except when a court or interdisciplinary team determines it is not in the best interest of the youth to transition. Counties must develop transition plans for these youth.

**SB 14-012: Concerning Increasing the Assistance Payment for the Program for Aid to the Needy Disabled, and in Connection Therewith, Making and Reducing Appropriations.** This bill allows the State Department to promulgate rules to allow a county to waive the requirement that a person apply for SSI benefits prior to receiving Aid to the Needy Disabled (AND) to allow a person to submit an SSI application that is

thorough and complete. The bill allows an increase in the payment. Lastly, the bill creates a pilot program to assist with SSI applications.

## **Education**

**HB 14-1102 – Concerning gifted education programs in public schools and in connection therewith, making an appropriation.** This bill increases school district’s obligations to identify and provide gifted children with gifted education programs, and increases funding for the same.

**HB 14-1156 – Concerning extending the age of eligibility for the child nutrition school lunch protection program, and, in connection therewith making and reducing appropriations.** This bill extends the age of eligibility for free lunches from second to fifth grade and appropriates additional funds.

**HB 14-1136 – Concerning exempting a continuing professional education program that is approved by a state professional licensing board from regulation by the division of private occupational schools in the department of higher education.** This bill exempts professional continuing education programs from the jurisdiction of DPOS.

**HB 14-1182 – Concerning changes for the 2015-16 school year to certain public education accountability measures specified in the “education accountability act of 2009” to accommodate the transition to administering new statewide assessments.** This bill modifies recommended actions the State Board of Education can take with respect to school district turnaround and priority improvement plans based on ratings given during the 2015-16 school year, and changes factors used by the State Board to assign accreditation ratings and performance plans.

**HB 14-1190 – Concerning the factors that are used to determine the financial capacity to provide matching moneys of a school district or board of cooperative services that has applied for financial assistance under the “building excellent schools today act.”** The bill modifies and changes the criteria used by the BEST Board in evaluating requests for financial assistance including the applicants bonding capacity.

**HB 14-1294 – Concerning student data collection privacy protections administered by the department of education.** The bill requires CDE to publish an index of utilized data elements and privacy policies regarding accessibility to data and notices of student and parent rights. The bill also requires CDE to have a detailed data security plan regarding confidentiality of

student data and to create a data security template for school districts to use to create their own data security plans.

**HB 14-1298 – Concerning the financing of public schools, and, in connection therewith make and reducing appropriations.** This bill sets FY base per pupil funding, clarifies the calculation of the cost of living factors, establishes the amount of the negative factor, increases the number of positions in the preschool program, establishes the new English Language Proficiency Act, provides funds for professional development for teachers working with English Language Learners and increases appropriation to boards of cooperative services.

**HB 14-1319 – Concerning the creatio of an outcomes-based funding model for higher education, and, in connection therewith, making an appropriation.** The bill creates a new outcome based funding model for state institutions of higher education that utilizes a consistent set of uniform performance metrics.

**HB 14-1365 – Concerning junior college boards of trustees, and, . . . directing the attorney general to serve as legal advisor to colorado mountain college upon request from its board of trustees.** The bill allows Colorado Mountain College to request and receive legal advice from the Colorado Department of Law.

**SB 14-01 – Concerning making college education more affordable by imposing further restrictions on tuition increases, increasing financial aid, and increasing operating support for each governing board of a state-sponsored institution of higher education by eleven percent.** The bill increases funding for state institutions of higher education by an additional \$100 million and caps tuition rate increases for in-state undergraduates 6 percent for upcoming two fiscal years.

**SB 14-004 – Concerning the role and mission of community colleges.** The bill expands the role and mission of the community colleges to allow them to establish four-year bachelor of applied science programs.

**SB 14-114 – Concerning expanding access for all students to colorado state univeristy – global campus.** The bill expands the role and mission of CSU-Global and allows it to offer certain on-line bachelor degree programs approved by the Colorado Commission on Higher Education.

## **Health Care**

**SB 13 13-222 - Concerning improving access to childhood immunizations, and, in connection therewith, making an**

**appropriation.** This bill allows CDPHE to create a system for purchasing vaccines and to assess the ability of HCPF to purchase vaccines for children enrolled in CHP.

**SB 13-242 - Concerning dental services for adults in the medicaid program, and, in connection therewith, making and reducing an appropriation.** This bill creates an adult dental benefit for adults in the Medicaid program.

**SB 13-200 - Concerning an increase in the income eligibility for certain optional groups in the medicaid program to one hundred thirty-three percent of the federal poverty line, and, in connection therewith, making and reducing an appropriation.** This Medicaid expansion bill allows for funds in the hospital provider fee cash fund to be used to increase the income eligibility for certain populations.

**HB 13-1068 - Concerning on-site inspections of medicaid providers.** This bill aligns state law with federal law and allows the Department to conduct unannounced inspections of providers for the purpose of an audit or review for compliance with state and federal law.

**HB 13-1314 - Concerning the transfer of the administration of long-term services for persons with intellectual and developmental disabilities to the department of health care policy and financing.** This bill transfers the division of developmental disabilities from DHS to HCPF.

### **Public Utilities Commission**

**HB 1327-1331 – Telecom Reform Legislation.** These five bills amended article 15 of title 40, to deregulate advanced and basic telecommunications services, except basic services subsidized through Colorado’s high cost fund. Where providers receive high cost funding, the Commission retains the authority to set maximum prices and impose provider of last resort obligations. The bill limited high cost distributions to providers serving areas “without effective competition” for basic service. The bill assumes the Commission will conduct proceedings to determine which areas are without effective competition and thus be eligible for high cost funding and subject to rate and provider of last resort regulation. These bills also authorize the formation of a broadband board, to distribute monies for construction of broadband networks from high costs monies no longer distributed to basic service providers.

The bills reserve the Commission's authority over basic emergency (911) service, even if the types of services or technologies were placed into deregulated status.

**SB 125 - Concerning the regulation of transportation network companies.** This bill authorizes transportation network companies (TNCs) to operate in the state and offer transportation services by connecting drivers with riders through digital communications networks. Rates, terms, and conditions of service are beyond Commission purview; only permitting and safety regulations are authorized by the bill.

### **Public Officials**

**SB 13-210 - Concerning employment conditions for correctional officers, and, in connection therewith, making an appropriation.** The bill designates a portion of Fort Lyon for use as residential community by the Department of Local Affairs to provide supportive housing services to homeless individuals.

**HB 13-1135 - Concerning the ability of a person to preregister to vote if the person has reached sixteen years of age but will not be eighteen years of age by the date of the next election, and, in connection therewith, making an appropriation.** The bill allows any person who is sixteen years old, but who will not be eighteen years old by the date of the next election, to preregister to vote.

**HB 13-1224 - Concerning prohibiting large-capacity ammunition magazines.** The bill prohibits large-capacity ammunition magazines.

**HB 13-1229 - Concerning criminal background checks performed pursuant to the transfer of a firearm, and, in connection therewith, making an appropriation.** The bill requires criminal background checks to be performed when transferring a firearm.

**SB 14-161 – Concerning the modernization provisions of the “Uniform Election Code of 1992” that ensure voter access for eligible electors.**

## **III) HOT ISSUES:**

### **Human Services**

- The Unit continues to defend Human Services in the CBMS litigation. The Unit continues to monitor monthly case processing for compliance

with the settlement agreement, and timely processing has declined over the past year.

- The Unit is working closely with the Department providing advice on specific cases and legal questions as the regional centers reduce beds and move individuals into the community. Families or guardians do not always agree that moving out of the regional center is the best for the individual.
- The Division of Youth Corrections will be making significant changes in practice and policy over the next year. The Legal Center and other advocacy organizations are watching closely and will be meeting with the Department to assure the changes address their concerns about the use of seclusion and physical management techniques, while others are concerned about assaults and safety in the facilities.

The Department will be working to assure that all reports going to the courts from the various evaluators and programs are the highest quality. These are individuals served through the State Hospital in Pueblo, and some are receiving treatment to restore them to competency in the new RISE program at the Arapahoe County Jail.

### **Health Care**

- The Unit continues to defend HCPF in the CBMS litigation. The Unit is continuing to monitor case processing figures for compliance with the settlement agreement.
- The Unit continues to provide assistance to HCPF regarding implementation of the Affordable Care Act.
- The Unit is defending HCPF in numerous deferrals and disallowances from CMS.
- The Unit is defending HCPF in numerous procurement code/contract award challenges.
- The Unit continues to defend HCPF in ongoing challenges to its automatic lien statute which allows the state to collect millions of dollars each year from liable third parties.
- The Unit is continuing joint efforts with the U.S. Attorney's office and the Medicaid Fraud Control Unit to pursue Medicaid provider fraud, in both the civil and criminal arenas.

- The Unit continues to defend HCPF in appeals filed by nursing facilities challenging reimbursement rates.
- The Unit continues to defend HCPF in an ADA action in federal district court challenging HCPF's reimbursement rate for non-emergency medical care.
- The Unit is defending both HCPF and CDPHE in a challenge to the interpretation of the Constitutional Amendment that prohibits public funds for abortions.
- The Unit continues to provide legal advice and opinions to the Department of Public Health and Environment, Medical Marijuana Registry. We also continuously defend the Department against subpoenas seeking confidential information, and assist the Board of Health with rulemaking issues.
- The Unit continues to assist CDPHE with ongoing public health and disease control investigations.
- The Unit continues to defend the CDPHE's Laboratory Services Division against challenges to their new breathalyzer testing instrument and from subpoenas seeking confidential and protected information.

### **Labor/Personnel and Administration**

- *CDLE WyCAN Project.* The U.S. Department of Labor ("USDOL") made federal grant funds available to the states for the purpose of facilitating the design, development, and implementation of unemployment insurance ("UI") benefit systems and tax systems by multiple states working cooperatively. It is the stated intent of the USDOL to make the systems developed with federal funds available for use by other states. The states of Wyoming, Colorado, Arizona, and North Dakota (collectively, "WyCAN States") jointly applied for and received the federal funds for this use. The total grant amount is \$58,100,000 ("Grant Funds") to the WyCAN States for this system (the "Project"). With contributions from each state for state specific work, the total project amount is \$110M. The Unit is assisting CDLE in these discussions and regulations.
- *CDLE, Division of UI v. FedEx.*, Docket Nos. 6299-2011, 7956-2011, 37816-2010. These three cases involve a reclassification of package delivery drivers from independent contractors to employees. Extensive discovery is proceeding and a hearing is scheduled for fall of 2014.

- The Unit is working with the Office of Information Technology to streamline the State's contracting and administration process in connection with information technology.
- The Unit will continue to work with DPA and the Governor's Office to reform of the State procurement and State contracting policies and procedures.

## **Education**

- The Unit continues to provide comprehensive legal advice to the Colorado Department of Education, the Colorado Department of Higher Education, the Colorado State Board of Education, the Colorado State Charter School Institute, the CHEIBA Trust, College Invest, the Colorado Historical Society, and the Colorado School for the Deaf and Blind, including: board representation; transactional, employment, regulatory compliance advice; drafting formal and informal opinions on education issues, and rule and policy drafting and interpretation.
- The Unit continues to coordinate legal services for, and provide legal advice to, over 20 public universities, colleges, community colleges and junior colleges, including the University of Colorado System, Colorado State University System, University of Northern Colorado, the State Board of Community Colleges and Occupational Education System, Metropolitan State University of Denver, the Auraria Higher Education Center, the Colorado School of Mines and Colorado Mountain College.
- Unit attorneys continue to serve as General Counsel providing comprehensive legal services to Adams State University, Western State Colorado University, Colorado Mesa University, and Fort Lewis College.
- The Unit continues to handle a wide range of litigation ranging from administrative hearings on student or faculty discipline and teacher licensing matters to litigation involving contract matters, requests for injunctive relief, Title IX, First Amendment and student discipline matters, as well as complex constitutional challenges to education related statutes.

These matters have significant potential impact and have received coverage in the press.

- *Dwyer v. State of Colorado*. On June 27, 2014, the Colorado Rural Schools Caucus, East Central Board of Cooperative Educational Services, Colorado PTA, and several school districts and individuals

filed suit against the State of Colorado, Commission Robert Hammond, and Governor Hickenlooper challenging the constitutionality of the 2010-11 amendments to the Public School Finance Act known as the “negative factor” under Amendment 23 to the Colorado Constitution. The Unit is defending the State in this litigation.

- *Taxpayers for Public Education, et al., v. Douglas County School District RE-1, et al., and LaRue, et al., v. Colorado Board of Education, et al.* On February 28, 2013, the Court of Appeals issued a ruling in favor of the Department of Education and Douglas County School District by overturning the district court's permanent injunction against a pilot program that would allow up to 500 Douglas County public school students to attend private schools of their choice. The Court of Appeals concluded that plaintiffs lacked standing, and that the pilot program did not violate any of the Colorado constitutional provisions at issue. Plaintiffs filed petitions for writs of certiorari on April 11, 2013, and Defendants filed responses on April 19, 2013. On March 17, 2014, the Supreme Court granted the Petitions and issued a briefing schedule, but substantially reframed the issues for review. Plaintiffs/Petitioners’ filed their opening brief on May 29. The Unit will coordinate with counsel for Douglas County to defend the Department.
- *Masters, et al. v. School Dist. No. 1, et al.* On January 29, 2014, the Colorado Education Assoc. filed a class action lawsuit against Denver Public Schools and the State Board of Education challenging the “mutual consent” provision of SB 10-191 (the new educator evaluation statute), as violating Colo. Const. Art. II, sections 11 and 25. The Unit will defend the State Board.
- *Cost Recovery Efforts for Environmental Contamination on the campus of Colorado School of Mines.* Mining research projects conducted primarily by private mining interests and the Federal government at a research center on the Colorado School of Mines campus left research wastes containing radioactive materials and other metals at the Site. In the 1990s, the EPA conducted a partial clean up that proved ineffective. Cleanup efforts extended through 2012 with the total funds expended by Colorado School of Mines in cleaning up the site and pursuing recovery exceeding Seventeen Million Dollars. The State has negotiated a Consent Decree with numerous Principal Responsible Parties (PRPs) and the Federal government to recover a large proportion of the State’s unrecovered costs, which was approved by the Federal District Court in December of 2013. The School has received nearly all of the payments due under the Consent Decree. Intensive efforts to conclude negotiations with the remaining PRPs and file final suit are ongoing.

## **Public Officials**

Recent and pending Public Officials Unit litigation—These lawsuits have potentially significant public impact or have been covered extensively in the media:

- *1405 Hotels, LLC v. Colorado Economic Development Commission*. The Unit is representing the Colorado Economic Development Commission in this state court lawsuit.
- *Citizen Center v. Gessler, et al.* The Unit is representing the Secretary of State in this lawsuit, which currently is pending resolution of the appeal before the Tenth Circuit.
- *Colorado Common Cause v. Gessler*. The Unit represented the Secretary of State in this state court lawsuit.
- *Paladino v. Gessler*. The Unit is representing the Secretary of State in this state court lawsuit, and currently a petition for *writ of certiorari* is pending in the Colorado Supreme Court.
- *Coalition for Secular Government v. Gessler*. The Unit is representing the Secretary of State in this federal district court lawsuit.
- *Cooke v. Hickenlooper*. The Unit is representing the Governor in this federal district court lawsuit.
- *Rocky Mountain Gun Owners, et al. v. Hickenlooper*. The Unit is representing the Governor in this state court lawsuit.
- *Colorado Medical Society v. Hickenlooper*. The Unit is representing the Governor in this state court lawsuit, which currently is pending resolution of the appeal before the Colorado Supreme Court.
- *Jones v. Samora*. The Unit represented the Secretary of State, who participated as an *amici* in this case.
- *Recall Petition Challenges by Senators Morse and Giron*. The Unit represented the Secretary of State in these two state court actions.
- *The Colorado Libertarian Party v. Gessler – Parts I and II*. The Unit represented the Secretary of State in these two state court actions.

- *Governor Hickenlooper's Interrogatory to the Supreme Court.* The Unit represented the Governor in this state court action.
- *E.W. Scripps Company v. Suthers.* The Unit represented the Attorney General in this state court action.
- *Lower North Fork Fire Litigation.* The Unit represented the Governor and the Attorney General in this state court action.
- *Brinkman, et al. v. Long, et al.* and *McDaniel-Miccio, et al. v. Colorado, et al.* The Unit is representing the State of Colorado and the Attorney General in this state court action.
- *The Grand Old Party v. Gessler.* The unit is representing the Secretary of State in this state court action.

### **Public Utilities Commission**

a. Pending PUC litigation – The PUC Unit is defending the PUC in the lawsuits described below:

- *Boulder municipalization appeal.* In January, 2014, the City of Boulder filed for judicial review of the PUC's decision asserting jurisdiction over electricity services Boulder's utility may provide outside Boulder city limits. The decision also requires Boulder to obtain Commission approval for transfer of regulated assets from Public Service to Boulder before the city files for condemnation. Briefing in the judicial review action will conclude July 23, 2014. In violation of PUC orders, on July 17, 2014, the City filed a condemnation action to acquire regulated assets from Public Service without first obtaining Commission approval. It is possible the PUC may intervene as a party in this condemnation action.
- *American Tradition Institute v. State of Colorado.* This federal lawsuit challenges Colorado's Renewable Energy Standard under the dormant Commerce Clause of the United States Constitution. Plaintiffs seek injunctive and declaratory relief as well as damages and attorneys' fees under § 1983. The federal district court granted the state of Colorado's motion for summary judgment on all claims, dismissing the suit with prejudice. The plaintiffs have appealed to the United States Court of Appeals for the Tenth Circuit. Will Allen is heading the PUC's representation in this case.

b. Potential PUC litigation:

- *Elimination of High Cost Funding in Areas of Effective Competition.* The Commission applied the Telecom Reform Legislation and eliminated about \$2 to \$3 million of high cost support in 56 wire centers served by CenturyLink, on the basis of the Commission's previous finding of effective competition in those areas. CenturyLink may seek judicial review contesting the Commission's interpretation and application of the new legislation.
- *Regulation of Basic Emergency Service.* The Commission likely will conduct rulemakings to impose regulations upon all providers of basic emergency service, without regard to the technologies used. The providers deploying IP-enabled services may challenge the Commission's authority under state and federal law to impose state regulation upon these otherwise deregulated services.

**IV) WORKLOAD MEASURE:**

**DEPARTMENT OF HUMAN SERVICES**

Workload Measure	FY 15 Actual	FY 16 Estimate
Defend the Department in litigation regarding the implementation of the Colorado Benefits Management System (CBMS).	Review and submit monthly data regarding timely processing in accordance with settlement agreement; communicate with plaintiffs' counsel to address concerns, CBMS upgrades and processing data.	Work with the Department to address systemic issues; review monthly reports, and if necessary defend in active litigation.
Defend County confirmations of child abuse/neglect in the State database system on behalf of the Department for use in employment/background checks.	Ongoing litigation to prosecute child abuse/neglect in full evidentiary hearings before the OAC.	Aggressively prosecute child abuse cases to prevent persons who are found responsible for child abuse from working with children.

Prosecute licensing actions for the Division of Childcare	Actively litigate to revoke, suspend, and deny licenses where the facility fails to follow department rules, the licensee or employee commits child abuse, or otherwise fails to assure safe care for children.	Continue to actively prosecute child care licensing cases to assure safe childcare.
Advise the Department in rulemaking and adoption process.	Review rules and advise on authority and substantive content.	Continue advising on rulemaking.
Initiate actions to revoke, suspend, or deny substance abuse treatment licenses for the Division of Behavioral Health, and certifications for the Division of Developmental Disabilities.	Prosecute treatment agencies or certified service agencies for failures to comply with Department regulations.	Continue to represent the Divisions in licensing actions.
Defend the Department in administrative proceedings brought by recipients of Vocational Rehabilitation services or programs who were denied or reduced services.	Actively defend and, where possible, negotiate settlements for the Division of Vocational Rehabilitation.	Continue to defend the Department in these actions before the OAC. Assist the Division to improve the administrative hearing rules for these cases.
File petitions in district courts on behalf of the Division of Youth Corrections for aggravated offenders, requesting extensions of commitments, release from mittimus or vacating illegal	Represent the DYC in all post-commitment juvenile proceedings, specifically those requiring a return to court for a change in placement or status or responding to subpoenas for records.	Continue representing the DYC in juvenile cases and providing legal advice. Represent the DYC in direct file cases where the juvenile should be transferred to adult jail.

sentences. Represent the Division to transfer a youth from juvenile detention to adult jail when requested by DYC.		
Assist the Department to respond to subpoenas and open records requests.	File motions to quash or redact records as needed when responding to records requests.	Provide ongoing legal advice and representation.
Represent and advise the Regional Centers and the Disability Determination Services Division.	Provide legal advice and represent the Department when needed in court actions.	Advise and represent the Division in court proceedings, represent the Department in Imposition of Legal Disability cases, and provide legal advice as clients are transitioned to the community.

#### Caseload Trends:

The Human Services Unit continues to see a greater variety of cases and requests for legal advice from more divisions within the Department of Human Services.

Type of Case Status	Number of Cases	Current
All Other Cases	80 cases or issues assigned	53 currently active
Child Abuse/Neglect	51 cases received	17 active currently
Child Care Facility Licensing	40 cases received (17 were summary suspensions of the license)	23 active currently
Youth Corrections	24 cases received	All granted or pending

## HEALTH CARE

Workload Measure	FY 14 Actual	FY 15 Estimate
<b>Department of Health Care Policy and Financing</b>		
Defend HCPF in litigation regarding the Colorado Benefits Management System.	Monitor provision of claims processing date. Respond to inquiries from plaintiffs' counsel	Anticipate that this office will continue to monitor a very complex settlement, especially after the implementation of ACA and Medicaid expansion.
Defend HCPF in numerous administrative and civil proceedings brought by recipients and providers. Pursue overpayments due from providers for amounts unlawfully paid.	95 new incoming civil cases received.	Given the substantial increase in Medicaid we anticipate increased number of provider and recipient appeals.
Recover funds expanded as a result of third parties' actions and defend challenges to automatic lien statute.	Total recovery of \$209,010.	Same.
Coordinate with HCPF's Program Integrity Unit to uncover and eliminate provider overpayments and fraud in the Medicaid program.	Prosecute and defend provider overpayment appeals at civil level. Work with agency and health care fraud task force to identify fraud in the Medicaid program.	Anticipate increase in provider appeals due to increasing Medicaid enrollment.
Advise HCPF in the rule-making and adoption process to	Continue to provide advice to Medical Services Board, attend monthly meetings,	Continue representation of MSB.

keep the state in compliance with federal and state statutes in connection with the distribution of benefits.	and review proposed regulations for compliance with state and federal law.	
Provide advice and legal opinions with regard to numerous Medicaid, health care, and CORA issues.	65 requests for general advice and legal opinions received.	Need for legal advice and opinions is expected to increase due to health care reform and expansion.

**Colorado  
Department of  
Public Health and  
Environment**

Workload Measure	FY 14 Actual	FY 15 Estimate
Actions prosecuted to revoke, suspend, or place on probationary status licenses of Emergency Service Providers.	25 new incoming matters received.	Anticipate equivalent case load.
Defend civil action, provide legal advice and opinions, and defend against subpoenas seeking confidential and/or overly burdensome requests.	200 requests received.	Same as FY 14.
Prosecute licensing actions involving Health facilities licensed under the authority of the Department.	20 new matters received.	Anticipate equivalent case load.

Provide rulemaking advice to Board of Health.	Review all rules and attend monthly Board meetings. Provide advice and legal opinions to Board.	Same as FY 14
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## **EDUCATION**

### *Caseload trends:*

The unit continues to average 2-3 major constitutional cases each year.

### *Legislative Measures*

The General Assembly enacted numerous laws affecting the State Board of Education's oversight responsibilities. Many will require additional rule-making, policy and procedure creation, and additional hearings and board meeting work.

Workload Measure Teacher Licensure	Unit	FY 12 Actual	FY 13 Actual	FY 14 Actual
Total teacher licensure matters referred	# of matters	89	117	80
Settlements obtained	# of settlements	14	15	15
Closed cases/matters	# of closed matters	30	62	55
Actions Filed/matters referred for litigation	# of cases	36	36	27
Cases/matters carried over to next FY	# of matters	9	56	59

*Objective:* To support the Department of Education and the State Board of Education in protecting school children from teachers who have violated State standards.

*Strategy:* Provide timely legal services to the clients on all matters referred; closely track case status to assure timeliness; solicit and respond to oral and written client feedback to maintain client satisfaction.

*Evaluation of Prior Year Performance:* The Unit avoided case backlogs and worked collaboratively with the client to achieve its objective of protecting students from substandard teachers.

*Key Workload Indicators:* Case status tracking numbers, client satisfaction surveys and ongoing communication to address client concerns.

### **PUBLIC UTILITIES COMMISSION**

Workload Measure	FY 13 Actual	FY 2014 Estimate
Providing legal advice and writing decisions in the major matters listed above and the multiple smaller matters that come before the PUC each week; representing the PUC in judicial review of PUC decisions.	The PUC Unit operated at a rate of about 150 hours per month for each of the Unit's 3 attorneys.	The unit is hiring a 4th attorney to handle the increased workload resulting from the telecommunications and trans legislation. We estimate that, absent an unforeseen circumstance, the Unit should bill at a rate of 150 hours per month, or 1800 hours per year, for each of the 4 Unit attorneys.
The PUC Unit also advises the Governor's Office on utility matters.	We estimate that between 50 and 100 hours were spent advising the Governor's Office on legislation addressing energy and telecommunications matters.	We estimate that at least as many hours will be billed advising the Governor's Office on legislative matters and perhaps defending legislation in state or federal court.

## PUBLIC OFFICIALS

<b>Workload Measure</b>	<b>FY 13-14 Actual</b>	<b>FY 2014-15 Current</b>	<b>FY 15-16 Estimate</b>
Providing general counsel and advice on a variety of legal matters, representing clients in contested litigation in both state and federal courts, and handling state and federal court appellate matters for clients.	During Fiscal Year 2013-2014, the Public Officials Unit operated at a rate of over 150 hours per month for each of the Unit's 4 attorneys. All 4 attorneys exceeded the 1800 billable hour requirement for the year.	For Fiscal Year 2014-2015 to date, each of the Public Officials Unit attorneys is on track to operate at a rate of at least 150 hours per month when adjusted for approved annual leave usage. The Unit anticipates adding a 5th attorney in August 2014.	We estimate that, absent unforeseen circumstances, the Unit should bill at a rate of at least 150 hours per month, or 1800 hours per year, for each of the Unit's 5 attorneys during Fiscal Year 2015-2016.

## LABOR/PERSONNEL AND ADMINISTRATION

### **DEPARTMENT OF LABOR AND EMPLOYMENT, DIVISION OF WORKERS COMPENSATION**

#### **1. Worker's Compensation Enforcement**

Objective: Pursue statutory fines against employers that fail to have WC insurance for their employees. In the event that employers continue to fail to obtain or maintain WC insurance coverage, the Division seeks to either bring the employer into compliance or close the business.

<b>Workload Measure</b>	<b>Unit</b>	<b>FY 13 Actual</b>	<b>FY 14 Actual</b>	<b>FY15 Estimate</b>
Total number of new cases in Unit		197	<b>193</b>	175 to 200
WC cases		54	<b>62</b>	75 to 100 cases
WC settlements		43	<b>48</b>	30 to 40

WC fines imposed		\$1.4M	<b>\$130K</b>	\$200K
WC fines sent to collections		\$1.3M	<b>\$117K</b>	\$150K

## 2. ICAO Appeals

The Industrial Claims Appeals Office (ICAO) serves as the first appellate level for appeals in Worker's Compensation and Unemployment Insurance cases. If an ICAO decision is appealed, that appeal is filed with the Colorado Court of Appeals. Further appeal is available in the Colorado Supreme Court. The ICAO selects cases that effect the overall administration of the WC or UI systems, and not just whether benefits were granted in a particular case.

Workload Measure	Unit	FY 13 Actual	FY 14 Actual	FY15 Estimate
Total number of cases		28	<b>24</b>	30 cases
Appellate briefs		19	<b>6</b>	30 briefs
Oral arguments		5	<b>3</b>	7 oral arguments

## 3. Division of Oil and Public Safety

The Division of Oil and Public Safety (OPS) has several statutory duties including oversight of petroleum storage tanks, amusement rides, boiler inspection program, and the elevator, escalator, and other public conveyances program. OPS is in the process of streamlining the administration of UST program claims with the goal of reducing the number of hearings and appeals.

Workload Measure	Unit	FY 13 Actual	FY 14 Actual	FY15 Estimate
New OPS cases		25	<b>16</b>	20 to 30 new cases
Successfully closed or dismissed cases		34	<b>17</b>	20 cases
OPS settlements		15	<b>16</b>	15 settlements



# **Strategic Plan FY 15-16**

## **Business & Licensing Section**

### **Department of Law**

**MISSION:** The Business and Licensing Section's mission is to provide the highest quality legal representation to regulatory boards, commissions, programs and governmental agencies.

**Objective 1:** Business and Licensing's ("B&L") attorneys shall serve as general counsel to the following clients to effectuate the shared goal of public protection: Department of Regulatory Agencies, Department of Agriculture, and the Independent Ethics Commission. B&L also serves as special counsel or conflicts counsel to other state agencies.

- Goal 1: Attorneys shall provide timely, accurate and responsive legal advice to the agencies and boards.
- Goal 2: Attorneys for all units shall identify general counsel and litigation needs of the agencies and boards and communicate those needs to supervisors and clients.
- Goal 3: Attorneys for all units shall assist in rulemaking as needed or requested by the agencies.
- Goal 4: When appropriate to the agency, attorneys shall develop and maintain internal tracking systems for cases, informal attorney general opinions, rulemaking, and legislation affecting the agencies.
- Goal 5: Attorneys shall provide aggressive and effective legal representation of the board or other clients on all appeals of board or agency decisions.

**Objective 2:** The Assistant Attorneys General ("AAGs") within B&L shall develop subject matter expertise on issues relevant to the clients they represent.

- Goal 1: The Section shall continue to implement the training protocols for new attorneys by pairing each new attorney with a First Assistant or mentor and by holding section-wide practice improvement sessions.
- Goal 2: The Section shall maintain competence of all attorneys by participating in the evaluation process and the goal planning process with supervisors.
- Goal 3: The attorneys shall attend Continuing Legal Education programs and other training relevant to their practice.
- Goal 4: Supervisors shall improve legal advice to all agencies by identifying areas of law and practice where section wide consistency can be achieved, and shall implement tools to address consistency.

**Objective 3:** The section shall effectuate the client's goals through effective litigation by initiating actions in administrative court, State District Court, courts of appeal and other courts as necessary.

- Goal 1: Attorneys shall effectively and efficiently litigate cases referred to the AGO.

- Goal 2: Supervisors and team leaders shall provide an educational environment in which attorneys and staff may increase their substantive knowledge of the subject matter and develop litigation skills.
- Goal 3: All units shall have policies in place to assure early attorney review and development of case strategies appropriate for all referred cases.
- Goal 4: All units shall identify backlogs and have plans in place to effectively manage backlogs.
- Goal 5: Units shall work with clients to continually educate investigators and staff regarding their role in managing evidence, affidavits and documentation supporting the legal elements that must be proved at hearing.

**Objective 4:** The B&L attorneys shall provide effective conflicts counsel to agencies as assigned.

- Goal 1: Attorneys shall effectively advise the State Personnel Board in its adjudicatory role in actions that come before the Board, and provide rulemaking support and other advice as required.
- Goal 2: Attorneys shall effectively advise the Civil Rights Commission in its adjudicatory role in actions that come before the commission, and provide rulemaking support and other advice as required.
- Goal 3: Attorneys shall effectively advise the Mined Land Reclamation Board in its adjudicatory role in actions that come before the Board.

## **I) BACKGROUND INFORMATION: BUSINESS AND LICENSING SECTION**

### **The Department of Regulatory Agencies**

The Department of Regulatory Agencies (“DORA”) houses several divisions. The AAGs enforce compliance with the law by prosecuting disciplinary actions against licensed professionals, by representing the programs in licensure denial actions, by litigating civil enforcement and subpoena enforcement actions, and by litigating injunctive actions. In addition to prosecuting individual cases, the attorneys provide general counsel advice regarding legislative and policy matters, rulemaking and case analysis. Examples include:

**Division of Professions and Occupations:** B&L AAGs provide legal representation to regulatory boards, committees and programs within the Division of Professions and Occupations, the largest division within DORA. The professions regulated include accountants, acupuncturists, addiction counselors, architects, athletic trainers, barbers, cosmetologists, chiropractors, dentists, dental hygienists, electricians, engineers, land surveyors, landscape architects, hearing aid dealers, massage therapists, marriage and family therapists, direct-entry midwives, nurses, nurse aides, nursing home administrators, occupational therapists, optometrists, outfitters, passenger tramways, physicians, physician assistants, anesthesiologist assistants, physical therapists, plumbers, podiatrists, pharmacists, private investigators, professional counselors, psychologists, respiratory therapists, social workers, speech pathologists, registered psychotherapists, surgical assistants, surgical technologists, the nurse-physician advisory task force for Colorado health care (“NPATCH”), veterinarians and the naturopathic doctors licensure program. B&L AAGs also provide representation to the Division

of Professions and Occupations in carrying out its oversight role for the Michael Skolnik Medical Transparency Act of 2010.

**Division of Real Estate:** The AAGs representing the Division of Real Estate provide legal counsel to the Colorado Real Estate Commission, the Board of Real Estate Appraisers, the Mortgage Loan Originator Board, and the Colorado Conservation Easement Oversight Commission. Unit attorneys provide each of these boards and commissions general counsel services. Unit attorneys also litigate on behalf of these clients in both state and administrative courts.

**Division of Insurance:** AAGs representing the Division of Insurance act as general and litigation counsel to the commissioner of insurance and various sections of the Division of Insurance (“Division”). The Division regulates all matters regarding the business of insurance in Colorado, including health care insurance, health maintenance organizations, long-term care, Medicare supplement insurance, life insurance, and property and casualty insurance (automobile and homeowners insurance). The Division also regulates public adjusters, preneed funeral contracts, commercial bail bonding and all unauthorized activities determined to be the business of insurance. Unit attorneys assist and advise the Division on a wide variety of subject areas related to the regulation of insurance companies and their agents (insurance producers), including rulemaking, changes and amendments to the insurance laws, informal attorney general opinions of legal issues pertaining to insurance, open records requests, and consumer complaints. Unit attorneys continue to assist the Division with new developments in the law regarding health insurance and significant changes in the laws regarding commercial bail bonding and public adjusters. Litigation is conducted in administrative and district courts on behalf of the DOI against insurance companies and producers in cases involving insurance law violations and/or the unauthorized business of insurance. Unit attorneys also represent the Division in all matters involving third party litigation.

**Division of Securities:** AAGs representing the Division of Securities assist the client in the regulation of securities, broker-dealers, sales representatives, investment advisers, and investment adviser representatives and other related entities. Unit attorneys conduct litigation on behalf of the Division of Securities in administrative and district court against individuals, companies, and investment funds or entities that operate in violation of the Colorado Securities Act.

**Division of Banking:** The Division of Banking regulates state-chartered commercial banks, trust companies, and money transmitters. The AAGs provide legal representation and advice to the Board and the Division of Banking on such issues as involuntary liquidations of banks, use of name, restructurings such as mergers, changes-of-control, and purchases and assumptions of assets, and consolidation applications, and general legal advice including rulemaking.

**Division of Financial Services:** AAGs representing the Colorado Financial Services Board assist the client in the regulation of life care institutions, state-chartered credit unions, and state-chartered savings and loan associations.

## **Independent Ethics Commission**

The AAGs representing the Independent Ethics Commission assist the Commission in carrying out its constitutional and statutory duties through the Commission's issuance of Position Statements, Advisory Opinions and Letter Rulings relating to standards of conduct for government officials. AAGs also help the Commission in its constitutional duty to investigate and hold hearings on ethical complaints.

## **Department of Agriculture**

The Business and Licensing Section provides general and litigation counsel to the Colorado Department of Agriculture and the Commissioner of Agriculture. This representation is provided by two full-time AAGs who represent and provide legal advice to the various divisions within the department including: the Animals Division, the Colorado State Board of Livestock Inspection, the Conservation Services Division, the Inspection and Consumer Services Division, the Plants Division, and the Markets Division. The AAGs also represent and advise the Colorado State Fair and several other marketing-related boards associated with the department. The AAGs assist the department in dealing with a myriad of complicated legal issues on a daily basis from livestock disease emergency quarantines, takings and destructions, to regulation of pesticide use, licensing of commodity handlers, certification of organic producers, and prevention of plant diseases, many of which involve complex interactions between state and federal law. The AAGs also assist with rulemaking, drafting of proposed legislation and the sunset review process.

## **Mined Land Reclamation Board**

The Business and Licensing Section provides a General Counsel position that serves as permanent conflicts counsel to the Colorado Mined Land Reclamation Board ("MLRB"), a multi-interest citizen board that establishes the regulations, standards, and policies that guide the Division of Reclamation, Mining and Safety ("DRMS"). The MLRB implements the Colorado Mined Land Reclamation Act, the Colorado Land Reclamation Act for the Extraction of Construction Materials, and the Colorado Surface Coal Mining Reclamation Act. The MLRB is actively involved in the decision-making process for controversial permit issuance and enforcement actions.

## **Other Conflicts Counsel Clients**

Business and Licensing also represents the Civil Rights Commission and the State Personnel Board. The Civil Rights Commission is a seven-member commission appointed by the Governor for four-year terms. The State Personnel Board includes five members serving five-year terms, three of whom are appointed by the Governor and two of whom are elected by members of the state personnel system.

## **II) PRIOR YEAR LEGISLATION:**

### **Department of Regulatory Agencies**

**Division of Professions and Occupations:** A number of programs underwent sunset review or were modified by legislation.

The General Assembly passed HB 14-1283 modifying the Electronic Prescription Drug Monitoring Program (“PDMP”) found in C.R.S. 12-42.5-402. The changes include requiring prescribing practitioners and pharmacists to register and create user accounts with the program, allowing a prescribing practitioner or a pharmacist to delegate authority to access the database to up to three designees who must be registered with the program, allowing the departments of public health and environment and health care policy and financing to access the database for public health purposes and Medicaid patient care coordination, respectively, and expanding law enforcement access to include data for individual pharmacies.

The General Assembly passed HB 14-0227 continuing the Colorado Dental Board. This Sunset legislation changed the name of the Dental Board from the Colorado Board of Dental Examiners to the Colorado Dental Board, and made significant changes to the practice act.

The General Assembly passed HB 14-0797 authorizing provisional licensure for physical therapists.

The General Assembly passed HB 14-1181 continuing the Nurse Physician Advisory Task for Colorado Health Care (“NPATCH”), found in C.R.S. 24-34-109.

House Bill 14-1387 exempts the University of Colorado at Boulder and the Colorado State University Fort Collins campus from the statutory requirements to obtain a state permit and obtain state inspections on electrical and plumbing work. Under the signed bill, inspectors employed by those institutions of higher education are authorized to inspect electrical and plumbing work on those campuses.

**Division of Real Estate:** Beginning July 1, 2015, all persons who manage the affairs of common interest communities must be licensed and regulated by the Director of the Division of Real Estate as a result of HB 13-1277. That bill sets forth the requirements for licensure as well as the grounds pursuant to which the Director may take disciplinary action against such a license. HB 13-1277 also provides that any action by the Director denying, revoking or suspending a license will be conducted according to the Colorado Administrative Procedures Act. This year, the General Assembly passed legislation, S.B. 14-117, which reauthorized the regulation of appraisers by the Board of Real Estate Appraisers through a recreation and reenactment of relevant statutes. This bill created no new substantive amendments.

**Department of Agriculture:** PACFA, the Pet Animal Care and Facilities Act, underwent its sunset review in 2013-2014, its first in five years (HB 14-1270). The Department’s AAG assisted with language drafting, responses to industry groups, and advisement on the effects of proposed language changes.

### **III) HOT ISSUES:**

#### **Department of Regulatory Agencies**

##### **Division of Professions and Occupations (previously known as “Division of Registrations”):**

Examples of cases handled by the attorneys representing the various boards, committees and programs within the Division of Professions and Occupations include:

**Board of Registered Psychotherapists v. Alex Panio / Board of Addiction Counselor Examiners and Board of Professional Counselor Examiners v. Whitney Harrah.** Alex Panio was the founder and president of the Adolescent and Family Institute of Colorado (“AFIC”) and Whitney Harrah was the clinical director of the facility in 2011. The boards brought a consolidated action to (A) block Panio from engaging in unregistered practice in psychotherapy, and (B) discipline Harrah for her conduct in facilitating Panio’s unregistered practice of psychotherapy. The unregistered practice stemmed from Panio’s treatment of an adolescent and her family dealing with issues of drug and alcohol addiction and abuse. A trial was held before the Office of Administrative Courts where the Administrative Law Judge found in favor of the boards and against both respondents. The Administrative Law Judge recommended sanctions against Panio for his unlicensed practice, and recommended that Ms. Harrah’s licenses be suspended for 18 months. The matter is currently in the exceptions process.

**Office of Massage Therapy Registration v. Stanley McFall.** Stanley McFall was a registered massage therapist in Pueblo, Colorado. While providing massage services to a client, it was alleged that Mr. McFall repeatedly exposed and inappropriately touched the client in a sexual way. A trial was held before the Office of Administrative Courts where the Administrative Law Judge found in favor of Office of Massage Therapy, recommending revocation of Mr. McFall’s registration. No exceptions were filed, and the matter is currently awaiting final agency action.

**Colorado Medical Board v. Office of Administrative Courts:** In a license denial action, and over the Medical Board’s objection, an Administrative Law Judge (ALJ) ordered the Medical Board to produce Confidential Letters of Concern (LOC) issued in the last five years which involved matters similar to those which formed the basis for the Board’s denial of license to an applicant. The Board interprets its organic statute, however, to protect LOCs from subpoena or discovery by the statutory peer review privilege in Section 12-36.5-104(10)(a), C.R.S.

Pursuant to procedures set forth in the Administrative Procedure Act, the Board petitioned the district court for relief from the ALJ’s order. The district court held that the peer review privilege stating that Board records were “not subject to subpoena or discovery and not admissible in any civil suit,” did not protect the Board records in an administrative proceeding. The district court interpreted the statute to protect such records from subpoena or discovery only in “civil suits” and the administrative license denial action was not one of those actions.

The Board thereafter petitioned the Colorado Supreme Court directly, seeking review of the district court order under Appellate Rule 21, which allows the Supreme Court to exercise discretionary review if relief through a normal appeal process would be inadequate and the issue is one of public concern. The Supreme Court opted to entertain the Board’s petition. After briefing and oral argument, in its opinion announced on June 23, 2014, the Court agreed with the

Board that the peer review privilege prohibits two separate types of action: (1) the subpoena or discovery of protected materials; and (2) the admissibility of such material in civil suits. The Supreme Court agreed with the Board that the term “civil suits” includes the Board’s adjudicatory administrative proceedings.

The case is a significant victory for the Medical Board and physicians who rely on the confidentiality of Letters of Concern in negotiating and resolving Board cases. The opinion also assures that all Board investigatory records, not just LOCs, are protected from subpoena or discovery with limited exceptions spelled out in the law.

**Colorado Medical Board v. Warren Kortz, M.D.:** Board AAGs filed a formal complaint at the Office of Administrative Courts alleging Dr. Kortz provided substandard care or failed to document portions of his care to numerous patients. After the filing and as a result of public notice generated by the filing, the Board received numerous additional patient complaints. The Board ultimately pursued discipline for Dr. Kortz’s care of surgical patients which fell below generally accepted standards of medical practice on the basis of intraoperative decision-making, intraoperative technical skills, patient selection, informed consent and post-operative care. Some of the decisions regarding inadequate informed consent involved choice of procedure, including the use of robotically-assisted surgery. During litigation but prior to trial, Dr. Kortz agreed to resolve the case through a settlement. Board AAGs secured public discipline including a permanent practice restriction that allows Dr. Kortz to practice only administrative medicine. Under the stipulation, Dr. Kortz shall not have patient contact or perform any act that requires the exercise of discretion in the prospective authorization of medical care.

### **Enforcement of Medical Practice Act Regarding Provider Conduct in Medical Marijuana Recommendations:**

AAGs had numerous opportunities to assist the Medical Board in enforcing Medical Practice Act requirements with respect to physicians and physician assistants for their roles in improper recommendations of medical marijuana. The Medical Board pursued violations of its practice act against multiple respondents for failing to provide care that met generally accepted standards of medical practice or for failing to conform to the requirements of the constitutional amendment and interpreting statutes authorizing medical marijuana. Examples include:

- **Dr. Lenny Sujdak:** A Board AAG pursued discipline against this physician for violating standard of care as well as failing to comply with requirements in health department statute and rules. Dr. Sujdak pre-signed Medical Marijuana Physician Certification forms, which he then provided to mid-level practitioners as part of an attempt to delegate the performance of medical marijuana evaluations. This action is contrary to the medical marijuana provision of the Colorado Constitution and state statutes regarding medical marijuana, which require that a physician establish a bona fide physician-patient relationship and perform medical marijuana evaluations. The Board concluded that Dr. Sujdak’s actions fell below the standard of care. Further, Dr. Sujdak did not appropriately supervise the mid-level practitioners. Dr. Sujdak’s mid-level practitioners certified that patients had chronic or debilitating diseases or medical conditions but failed to perform legitimate medical examinations to reach their determinations. On behalf of the Board, the AAG was able to secure public discipline including a letter of admonition, a requirement for completion of prescribing and ethics courses, and a five year probationary period during which Dr. Sujdak may not perform medical marijuana recommendations and may not delegate medical services to mid-level practitioners.

- **Anita Martinez, PA:** This physician assistant worked under the supervision of a physician who performed medical marijuana evaluations. The physician attempted to delegate additional evaluations to this physician assistant, who thereafter performed numerous medical marijuana evaluations. The Board's AAG on this matter secured public discipline in the form of a Stipulation and Final Agency Order that includes a letter of admonition, a requirement for prescribing and ethics courses, and a probationary period. During probation, Ms. Martinez must have an on-site supervisor. Ms. Martinez agreed that she may not perform evaluations for medical marijuana.
- **Dr. Dallas Williams:** Dr. Williams was found guilty after a jury trial in Larimer County District Court of a class four felony for attempting to influence a public servant. The conduct forming the basis of the conviction involved an evaluation for medical marijuana certification in which Dr. Williams did not establish a bona fide physician-patient relationship with the individual who presented for a certification. Although the individual did not have or report a debilitating disease or medical condition that would otherwise qualify him for medical marijuana certification, Dr. Williams provided him with a completed physician certification form. The Board's AAG successfully negotiated a Stipulation and Final Agency Order in which Dr. Williams agreed to permanently relinquish and retire his medical license.
- **Dr. Joseph Montante:** A Board AAG filed a formal complaint at the OAC against Dr. Montante, who had been performing MMJ evaluations and recommendations, after he was convicted of a felony offense for attempting to influence a public servant. Patient A presented to Dr. Montante for evaluation for medical marijuana certification. Patient A did not have or report a chronic or debilitating disease or medical condition that would otherwise qualify him for medical marijuana certification, but Dr. Montante proceeded to provide him with a completed physician certification form. On behalf of the Board, the AAG successfully obtained revocation of the physician's license.

**Paul C. Doran, D.M.D.:** On February 4, 2014, Dr. Doran entered into a Stipulation and Final Agency Order with admissions regarding his prescribing and self-prescribing controlled substances and other medications without documenting clinical justification, in violation of the Board Rule, and outside the scope of dentistry. On the eve of hearing, Dr. Doran permanently relinquished his license.

**Kelly B. Wettstein, D.M.D.:** Effective February 22, 2013, Dr. Wettstein entered into an agreement to cease practice pending final resolution of the Board case. On October 25, 2013, Dr. Wettstein and the Board entered into a Stipulation and Final Agency Order with admissions regarding billing for services not provided, substandard infection control practices, substandard patient care, and unlawful ownership of his dental practice. Disciplinary terms included indefinite suspension conditional upon ethics and documentation courses; practice restriction on ownership of a dental practice; practice restriction on employing family members; probation and practice monitoring; 58 hours continuing education; and an automatic revocation upon further violation of the practice act.

**State Board of Nursing v. Witt, APN, CRNA, R.N.:** Ms. Witt reported to work as a Certified Registered Nurse Anesthetist ("CRNA"). She was found on the floor of the women's locker room. She was taken to the emergency room, where her BAC was found to be 0.397. Ms. Will stipulated to a voluntary relinquishment of her multistate license privilege to practice as a nurse in Colorado, and withdrew her name from the Board's Advanced Practice Registry.

**State Board of Nursing v. Niell, L.P.N.:** Ms. Niell accessed thousands of patient records without authority and for no legitimate business purpose. Ultimately, Ms. Niell pled guilty to a felony and misdemeanor for her conduct. Respondent relinquished her nursing license.

**State Board of Nursing v. Sekich, C.N.A.:** After being convicted of a criminal felony and misdemeanor in Boulder County District Court, Ms. Sekich, a CNA, sought collateral relief from the District Court Judge pursuant to § 18-1.3-213, C.R.S. This statute, the result of statutory changes contained within SB 13-123 and effective May 2013, allows a licensee to seek collateral relief from a criminal conviction. The District Court Judge can order relief, preventing a licensing board from revoking a license based on the criminal conviction. (A felony conviction forms the basis for the Board of Nursing to discipline a licensee. An Order of Collateral Relief would preclude the Board of Nursing from taking action based on the felony conviction). This case was the first case in the Business and Licensing Section applying this statute. The Board, through counsel, filed an objection to the Application for Collateral Relief, arguing that the agency should be given deference in making disciplinary or licensing decisions based on criminal convictions. The Court issued an Order denying Ms. Sekich's application for collateral relief, agreeing that the Board is in a better position to determine the matter.

**State Board of Nursing v. Nieto, C.N.A.:** Mr. Nieto was arrested and charged with two counts of Sexual Assault (class 4 felonies), two counts of Crimes Against At-Risk Adult (class 2 felonies), and two counts of Sexual Assault- Victim Incapable of Appraising Condition (class 4 felonies) in Broomfield County District Court, for conduct that occurred at his place of employment while Mr. Nieto worked as a CNA. Mr. Nieto was summarily suspended. Counsel for the Board filed charges against Mr. Nieto in this case. His certificate to practice as a nurse aide was revoked by default.

**The Director for the Division of Professions and Occupations, Direct-Entry Midwives Program ("DEM") v. Durbin:** Ms. Durbin provided direct-entry midwifery care to two different patients at issue in this case. The care provided was in violation of the DEM practice act. For Patient A, she failed to refer her patient to a qualified practitioner for a suspected breech position before and during labor, falsified, failed to make essential entries, or in a negligent manner made incorrect entries regarding the baby's position in the patient records. For Patient B, she failed to properly evaluate the progress of labor, to transport Patient B after labor failed to progress appropriately, and failed to appropriately manage the baby's shoulder impaction during labor. The Director referred Ms. Durbin for a summary suspension. Ms. Durbin promptly signed an Interim Cessation of Practice Agreement in lieu of Summary Suspension and ultimately Ms. Durbin permanently relinquished her direct-entry midwife license in December 2013.

**Board of Licensure for Architects, Professional Engineers, and Professional Land Surveyors v. H. Gary Howell:** The Board of Licensure for Architects, Professional Engineers, and Professional Land Surveyors initiated disciplinary proceedings against professional engineer Gary Howell. The Board alleged that Mr. Howell failed to meet generally accepted engineering practice standards; failed to protect public safety, health, property, and welfare; and failed to exercise appropriate skill, care, and judgment in the application of building codes in his structural engineering work on the Meeker Elementary School. The school was closed pending repair of the structural issues. The Board sought a two-year suspension of Mr. Howell's license

and other discipline. Several weeks before the hearing, Mr. Howell agreed to voluntarily relinquish his license.

**Division of Real Estate:** Examples of cases handled by the AAG's representing the Division of Real Estate and programs within the Division include:

**Colorado Real Estate Commission v. Bernard McDonnell:** The Real Estate Commission referred a complaint against Bernard McDonnell, a licensed real estate broker, to the OAG after an investigation revealed that Mr. McDonnell took \$10,000 from his HOA without authorization while he was acting as its president. Ultimately Mr. McDonnell returned the funds to the HOA, most of which was returned when he resigned as its president. Mr. McDonnell argued, among other things, that the Real Estate Commission lacked the power to sanction his conduct because he was not acting as a real estate broker while serving as the HOA president. A hearing was held at the Office of Administrative Courts, following which the Court determined that the Real Estate Commission had jurisdiction over Mr. McDonnell's conduct, that Mr. McDonnell had converted the funds from the HOA, and that Mr. McDonnell engaged in dishonest dealing. The Administrative Law Judge issued an Initial Decision recommending that Mr. McDonnell's real estate broker's license be placed on probationary status for three years, he be publicly censured, he be required to complete six hours of ethics coursework, and the imposition of a fine of \$5,000. The Commission issued a Final Agency Order upholding the Initial Decision.

**Colorado Real Estate Commission v. Steve Swenson:** Mr. Swenson was a licensed real estate broker who owned H&S Telluride Ventures, Inc., a licensed real estate brokerage that provided rental property management services in Colorado. A routine, on-site audit of H&S financial records conducted by DORA investigators found that the company was missing around \$60-\$100,000 of client/tenant security deposits. After negotiations, Mr. Swenson agreed to a settlement where his real estate broker license and the H&S Telluride Ventures' real estate brokerage license were revoked. He also admitted to five violations of real estate broker licensing law, including converting funds of others without proper authorization, dishonest dealing, and demonstrating unworthiness or incompetency to act as a real estate broker. Mr. Swenson was censured publicly, required to notify his clients of his unlawful behavior, and will pay a \$10,000 fine upon any future application for a real estate broker/brokerage license. Criminal charges are also pending in this matter.

**Colorado Real Estate Commission v. Miguel A. Silva:** Mr. Silva, a licensed real estate broker, unlawfully entered a home that was owned by two active duty soldiers in the United States Army while they were on temporary deployment to Fort Drum, New York. Mr. Silva not only unlawfully gained access into the home; he also donated all of the homeowners' furniture, household items, and personal belongings to the Salvation Army without the homeowners' permission or knowledge. Mr. Silva thereafter leased the property without authorization and collected money from unwitting tenants. Mr. Silva currently is facing several felony charges in El Paso County arising out of the same set of facts. Due to Mr. Silva's ambiguous and not fully responsive discovery, the Administrative Law Judge barred Mr. Silva from presenting any defense that he was authorized to lease the soldiers' home and ordered that the Colorado Real Estate Commission be awarded its costs and attorneys' fees related to the discovery violations. Thereafter, Mr. Silva agreed to the revocation of his license, admissions to eight violations of real estate licensing law, and a \$17,500 stayed fine to be paid if Mr. Silva ever

applies for any license regulated by any of the boards or commissions housed within the Division of Real Estate. Mr. Silva also paid \$2,500 to the Division of Real Estate for attorney's fees related to the discovery matter.

**Colorado Real Estate Commission v. Gregory Geller:** Mr. Geller is a licensed real estate broker and owner of Vision Real Estate, a highly visible real estate brokerage firm in the Denver area. Mr. Geller pursued real estate "investments" as part of his business and created a niche marketing to—and purchasing properties from—senior citizens who desired a quick sales transaction with little to no hassle. While acting as a purchaser, Mr. Geller often marketed his status as a licensed real estate broker to build trust with seniors and to convince them that he knew the market, was offering them a good deal, and could handle all of the cumbersome paperwork. Mr. Geller's business model involved getting a seller (often senior) quickly under contract for a below market value and then, unbeknownst to the seller, he immediately assigned his buyer rights to a third party investor who sought to renovate the property in exchange for a significant referral fee payment to Mr. Geller. Unfortunately, the complainant in this case suffered from early Alzheimer's and had little recourse once locked into the buy-and-sell contract and his family discovered that "good deal" actually meant an offer far below market value.

Interestingly, during the course of litigation, Mr. Geller paid \$20,000 to the complainant in an attempt to make the matter go away. Ultimately, Mr. Geller agreed to a settlement which included a license downgrade, admissions to two violations of the real estate broker license law, a \$14,000 fine, a public censure, and coursework in ethics, contracts, and brokerage relationships.

**Colorado Real Estate Commission v. Steven Mast:** Licensed real estate broker Steven Mast represented the buyer in a contract to purchase a home. The contract required the seller to provide the buyer a Seller's Property Disclosure disclosing any potential defect of which the seller was aware. However, the seller never provided the disclosure and Mast never followed up to obtain it. Mast also never informed the buyer of his right to terminate the contract due to the seller's failure to provide the disclosure. The disclosure was critical here because the buyer elected to self-inspect the home instead of hiring a professional. The buyer discovered significant problems with the foundation and roof after closing, which led to cancellation of his homeowner's insurance. The cost to repair the home was more than the buyer could afford. He was forced to move out and may have to allow the home to go into foreclosure. During the investigation, a copy of the disclosure was discovered disclosing the problems with the foundation and the roof. Buyer indicated that he would not have purchased the home if he had seen the disclosure. Mr. Mast ultimately admitted to two violations of real estate licensing law. He agreed to permanently surrender his real estate broker license and pay a fine of \$4,500.00.

**Division of Insurance:** Significant cases handled by the Insurance Unit include:

**J. Brown** - Bail bondsman J. Brown had a history of consumer complaints dating back to 1999 and his bail bonding agent license was placed on a probationary status in 2006. Despite being on probation, Brown continued to violate Colorado law and additional consumer complaints were received by the Division. The Division filed a Notice of Charges at the Office of Administrative Courts seeking revocation of Mr. Brown's bail bonding license for failure to timely post bail bonds, collection of premium for bail bonds posted by other bail bondsmen, failure to return

money to consumers after not posting bonds and various violations of the terms and conditions of his probation. The Division obtained summary judgment on several of the counts in the NOC. An additional consumer complaint for misappropriating \$30,000 resulted in a second case being filed by the Division in which the Division summarily suspended Mr. Brown's bail bonding agent license. Four days prior to a hearing on the summary suspension case the Division and Mr. Brown entered into a settlement agreement involving both cases whereby Mr. Brown admitted his wrongdoing, agreed to pay restitution to consumers, was assessed a \$300,000 civil penalty and agreed never to apply for another insurance producer license in Colorado.

**B. Winterton** - In July of 2013, the Division entered into a stipulation with B. Winterton, a Utah insurance agent, to resolve a case filed against Winterton by the Division at the Office of Administrative Courts. The case against Winterton was initiated when a former Winterton employee advised the Division that Winterton had been selling insurance in Colorado without a license. The Division's investigation revealed that Winterton had solicited or sold 105 insurance policies in Colorado without a non-resident insurance producer license. In the settlement agreement, Winterton admitted that he violated Colorado law by engaging in 105 transactions in Colorado without a non-resident insurance producer license. Winterton agreed to pay a civil penalty of \$315,000 (\$3000 for each of the 105 illegal insurance transactions) and to not apply for an insurance producer license in Colorado for at least five years

**J. Johnson** - In late 2011, J. Johnson submitted 16 insurance policy applications to Farmers Insurance Company falsely representing to Farmers that he had collected the initial premium due on each policy so that he could collect advance commissions in excess of \$38,000. The Division's investigation of Johnson also revealed that Johnson had misappropriated insurance premiums that several small business owners and individuals had paid to Johnson for insurance. The Division filed a Notice of Charges at the Office of Administrative Courts and the case proceeded to mediation that resulted in Johnson admitting the law violations, agreeing to pay restitution and a civil penalty of approximately \$88,000. An additional \$178,000 in civil penalties was assessed but stayed pending Johnson's completion of all the other terms and conditions of the settlement

**C. Wilson** - The Division filed a Notice of Charges against C. Wilson at the Office of Administrative Courts alleging that his insurance producer license should be revoked for failing to pay state income taxes in excess of \$25,000 and for demonstrating financial irresponsibility in failing to pay his taxes as well as failing to pay an outstanding judgment against Wilson in the amount of \$71,000 owed to Wells Fargo for a line of credit he had obtained for his insurance business. The Division prevailed on summary judgment and the matter was set for a sanctions hearing. The ALJ ruled in the Division's favor, revoking Mr. Wilson's license.

**S. McDaniel** - In 2012, S. McDaniel applied for a resident insurance producer license with life authority. The Division denied McDaniel's license application based on his admissions to fiduciary violations while previously licensed as a Real Estate Broker as detailed in a Stipulation and Final Agency Order that he entered into with the Colorado Real Estate Commission. McDaniel's fiduciary violations as a Real Estate Broker included: (1) failing to account for or timely remit money in his possession belonging to others; (2) commingling funds; and (3) failing to keep money belonging to others in a trust, escrow, or other account separate from his own. McDaniel requested a hearing on the license denial and the Division filed Notice of Grounds for

Denial with the Office of Administrative Courts. The case did not proceed to hearing and McDaniel entered into a settlement agreement whereby McDaniel admitted that the Division's denial of his license application was proper and that his fiduciary violations as a Real Estate Broker constituted violations of Colorado insurance laws (demonstrating financial irresponsibility and failure to fully meet the licensing requirements). McDaniel agreed to pay a civil penalty in the amount of \$3,000 for his violations and to not apply for an insurance producer license for one year.

**First American Title** - After more than a year and a half of contentious litigation in Denver District Court and the Court of Appeals, the Division reached a settlement with First American Title Insurance Company (FATIC) that required FATIC to pay a \$177,500.00 civil penalty. The main point of contention between the Division and FATIC centered on FATIC's claim that it was not responsible for any violations committed by its appointed agents. The litigation arose out of a Market Conduct Examination (MCE) in which the Division examined the business practices of FATIC for compliance with the state's insurance laws and regulations and found numerous violations. The settlement resulted in an Amended Final Agency Order by the Commissioner of Insurance finding that FATIC committed law violations in 17 different areas through both the acts of the company as well as the acts of its agents. FATIC paid the \$177,500.00 civil penalty in full and dismissed its pending cases in the Denver District Court and the Court of Appeals.

**Division of Securities:** The AAGs representing the Division of Securities handled a significant number of complex civil matters. For example:

**Rome v. Richard Roop:** Unit attorneys representing the Securities Commissioner obtained a temporary restraining order and then a preliminary injunction against Richard Roop and his entity Bottom Line Results ("BLR"). The Complaint alleges that the Defendants engaged in a scheme to defraud investors by failing to provide full disclosures regarding his handling of investor funds in connection with a real estate investment scheme. The scheme involves the investment in real estate promissory notes with Roop and BLR as the recipients of the funds through a trust arrangement. Investor funds would then be pooled in some instances with funds from other investors to allow Roop and BLR time to renovate if necessary, and then resell the property to new owners under a variety of financing arrangements. The Complaint also alleges that the investments were not registered nor exempt from registration, and that Roop was offering and selling the securities without the required license (his license had been previously revoked by the Division of Securities). The matter is currently pending in the Denver District Court and is set for a trial in March of 2015.

**Joseph v. Darrell McAllister:** Unit attorneys representing the Securities Commissioner prosecuted an injunctive action against McAllister based upon his fraudulent conduct in soliciting investments in Bank of Choice Holding Company. McAllister was President, CEO and Chairman of Bank of Choice and Bank of Choice Holding Company, and utilized his position to make a general solicitation of unregistered shares of stock by directing a subordinate to solicit "large depositors" to sign pre-prepared documents in order to make the investments. The Complaint alleged that four related investors were convinced to liquidate their Bank of Choice certificates of deposit in order to invest \$500,000 in McAllister's stock scheme based on representations that the preferred stock would pay 7.28% returns and the fact that they could redeem their investments after three years, and that the investment was guaranteed. Ultimately,

it was revealed that approximately 40 people purchased shares in the Bank of Choice Holding Company through McAllister's offerings. Eventually, the Colorado Division of Banking closed Bank of Choice, rendering the stock they purchased worthless according to the Complaint. Prior to trial, McAllister stipulated to the entry of a permanent injunction barring him from future violations of the Colorado Securities Act, and a payment of restitution.

In addition to traditional injunctive litigation, AAGs representing the Division of Securities are actively managing a number of cases where a receiver has been successfully sought by the DOS to seize investment funds, including Mueller Capital Management, Wealth Systems International and the DelGreene family of funds, Secured Financial Group and the Integrity Funds, Southern Financial Corporation and the Secured Real Estate Lending Fund, Mark Jackson, Dharma Investment Group and the Dharma family of entities, Yost Company, Valley Investments, and entities connected with Perry Sawano and Brad Hawkins (Providence Financial Services, Inc., d/b/a Integrity Financial Consulting, RMC Financial LLC, Delta Real Estate Fund, Ltd., and Aspen Ridge Investments).

**Independent Ethics Commission:** Over the past fiscal year, AAGs aided the Commission prepare for and conduct hearings on complaints, including a complaint filed against the President of Fort Lewis College (13-07) and another against the Governor (13-11). In addition to assistance at the hearings, AAGs prepared procedural orders, wrote client advisory memos and drafted versions of the final orders in those matters. AAGs also helped the Commission navigate a complicated personnel matter. Simultaneously, the AAGs assisted the Commission in hiring an additional Commission staff member and provided training and resources to the new staff member as necessary. In addition, AAGs assisted the Commission in its compliance with Colorado's Open Meetings Laws and Open Records Act. The AAGs also guided the Commission in its issuance of Advisory Opinions and Position Statements.

**Department of Agriculture:** Significant cases handled by AAGs representing the Department of Agriculture include:

**Low Level Aerial Applicators, Inc.:** In August 2012, the Department's Pesticide Enforcement Program learned that an aerial applicator may have allowed pesticide to drift onto homes and homeowners' associations surrounding a field in Larimer County where the applicator had made an application. After investigation, the Department determined that it had grounds to believe that the applicator had, in fact, drifted pesticide onto a private individual's home and onto two homeowners' associations. After finalizing its investigation and providing Low Level the opportunity to respond, the Department referred the matter to its AAGs who initiated settlement negotiations without success. The Department's attorneys filed a notice of charges in the spring of 2013, alleging drift onto a private individual's residence and onto two homeowners' associations. In September 2013, the Department's AAGs filed a motion for judgment on the pleadings because Low Level's answer did not deny the allegations. Low Level did not contest the motion, and the OAC entered judgment in favor of the Department, finding that pesticide had drifted onto non-target sites, including onto two different homeowners' associations and onto a private residence. The OAC granted the Department's relief sought: a \$6,000 civil penalty and a one-year probation of Respondent's Commercial Applicator's license.

**Salazar v. Lawton:** In April 2013, the Bureau of Animal Protection sought an injunction to restrain a rancher, John Lawton, permanently from owning, possessing, managing, or tending livestock. The Mesa County District Attorney brought a criminal action against Mr. Lawton, alleging in excess of 40 counts of animal neglect/cruelty. The Department's AAG stayed the civil proceeding pending the outcome of the criminal matter. Once a jury convicted Mr. Lawton of 40 counts of animal cruelty/neglect, the Department's AAG moved for summary judgment in the civil matter, which was granted June 25, 2014. The Mesa County District Court permanently enjoined Mr. Lawton from owning, leasing, managing, possessing, or otherwise tending livestock in Colorado.

**Salazar v. The Dog House:** Between 2010 and 2012, the Dog House, a doggie-day-care in Evans, allowed three dogs to escape from its facility, one of which died while outside its possession. Respondent refused to settle the matter with the Department without litigation, and the Department referred the case to the Department of Law with instructions to file suit if necessary. The Department's AAG attempted to negotiate a settlement with the respondent, who continued to refuse, through counsel. The Department's AAG filed suit; counsel for Respondent withdrew; and the Department's AAG received a favorable ruling from the OAC at the time of hearing, including a \$5,000 fine and one year's licensure probation.

**Mined Land Reclamation Board:** Significant cases handled by General Counsel for the MLRB include:

**High Country Citizens' Alliance v. MLRB.** High Country Citizens' Alliance ("HCCA"), a citizens group in Crested Butte, filed a judicial review action against the Board in March 2011 to set aside the Board's decision to approve a prospecting notice held by U.S. Energy. U.S. Energy is engaged in prospecting for molybdenum near Crested Butte. HCCA contended that the prospecting activities threaten water resources around Crested Butte and, therefore, the Board should have required U.S. Energy to post additional bond for water treatment costs. The Board heard the matter in January 2011, where it determined that sufficient financial warranty already exists to pay for both reclamation and protecting water resources, and that another state agency has jurisdiction over water treatment. In 2012, the District Court affirmed the Board's decision. HCCA further appealed the case the Court of Appeals; in October 2013, the Court likewise affirmed the Board's action in all respects.

#### **IV) WORKLOAD MEASURE:**

##### **WORKLOAD INDICATORS**

As a result of DORA's increased use of the Expedited Settlement Program within the Division of Professions and Occupations and Division of Real Estate, cases not requiring referral for legal services have been resolved within the agency. Consequently, the cases that have been referred to the Office of the Attorney General have been more complex and contentious. Consistent with the client's expectation, AAGs have continued to aggressively file or resolve most cases within a one-year period of time. AAGs have responded to this goal without compromising their commitment to prioritize the most egregious cases and promote public protection.



# **Revenue and Utilities Section (“R&U”)**

## **Department of Law FY 2015-16**

**MISSION:** R&U’s mission is to provide responsive and proactive legal representation of the highest quality to its clients.

### **I. R&U BACKGROUND**

R&U consists of four units: 1) General Tax and Enforcement; 2) Income Tax and Transportation, 3) Motor Vehicles and Enforcement, and 3) Public Utilities Commission (“PUC”) Litigation. These Units represent the following clients:

- Department of Revenue
- Department of Local Affairs (Property Tax Administrator and Property Tax Division)
- Statewide clients regarding bankruptcy matters
- Department of Regulatory Agencies (PUC Litigation Staff)

#### **A. General Tax and Enforcement Unit (“GTE Unit”)**

The GTE Unit provides legal advice and representation to the Department of Revenue on general tax and collections matters, as well as to the Marijuana Enforcement and Liquor Enforcement Divisions. This Unit also represents the Property Tax Administrator and Division of Property Tax within the Department of Local Affairs. Finally, the GTE Unit also provides advice and representation to all state clients on bankruptcy matters.

**Taxation (general tax matters excluding income tax).** GTE Unit attorneys defend Revenue’s taxation determinations and collection actions in administrative, district court, and appellate proceedings. The Unit also provides legal advice regarding rulemaking and legislative matters. Tax cases are often complex and involve disputed amounts in the millions of dollars. Taxpayers are statutorily entitled to receive two trials: one at the administrative level, and a *de novo* trial in district court. Many cases are appealed to Colorado’s appellate courts. When delinquent taxpayers declare bankruptcy, Unit attorneys also protect the State’s interest in bankruptcy court.

**Enforcement (Marijuana Enforcement Division, and Liquor and Tobacco Enforcement Division).** GTE Unit attorneys provide general counsel advice and represent these Enforcement Divisions regarding licensing and disciplinary matters in administrative hearings, during the exceptions process, and on appeal. GTE Unit attorneys handle many unique legal issues as a result of Colorado’s decriminalization and regulation of the marijuana industry when possession and distribution of marijuana remains illegal under federal law.

**Property Tax Administrator and Division of Property Tax.** GTE Unit attorneys prosecute cases related to state-assessed value before the Board of Assessment Appeals (BAA), the district courts, and appellate courts. The Division coordinates and

administers the implementation of property tax law throughout 64 counties in Colorado, and is responsible for the valuation of the operating plant and property of all public utilities doing business in Colorado. These include telephone companies, airlines and railroads, among others.

**Bankruptcy.** During FY 2013-14, R&U added a second bankruptcy attorney and a dedicated administrative assistant to create a Department of Law “bankruptcy desk” with a goal of providing faster and more thorough bankruptcy support for all state agencies that have claims in bankruptcy cases. These attorneys provide regular advice and representation to the Department of Revenue with respect to tax claims; the Office of Judicial Administration with respect to criminal restitution claims and other fines, penalties, and costs; the Department of Public Health and Environment with respect to environmental claims; various institutions of higher education with respect to obligations owed by students or former students; and the Department of Law with respect to consumer protection claims. In addition to maximizing recoveries from bankruptcy cases, the bankruptcy attorneys advise state agencies regarding bankruptcy compliance so as to minimize claims against the state for violations of the automatic stay or bankruptcy discharges.

## **B. Income Tax & Transportation Unit (“ITT Unit”)**

The ITT Unit provides legal advice and representation to the Department of Revenue on income tax matters and also represents the Trial Staff of the Public Utilities Commission within the Department of Regulatory Agencies on transportation matters.

**Income Tax.** The Income Tax attorneys represent Revenue in administrative, district court, and appellate proceedings in which income tax assessments are contested; provide general counsel support for issues related to income tax audit and assessments; and support and assist Revenue in rulemaking and legislative matters related to income tax matters. Income tax matters are complex and require intensive legal services to assure that taxpayers, including sophisticated national and international corporate taxpayers, pay the amount owed under the law, thereby protecting the interests of the State and all taxpayers.

Although the vast majority of conservation easement tax credit appeals have been resolved pursuant to the special procedures established by House Bill 11-1300, ITT Unit attorneys continue to provide general counsel advice and legal representation on the remaining cases.

**Transportation.** ITT Unit attorneys represent the Transportation Section Trial Staff of the Public Utilities Commission. This Section is responsible for enforcing the statutes and regulations governing motor carriers, including taxis, limousines, towing carriers, hazardous materials carriers, and movers. Following the passage of Senate Bill 14-125, the Transportation Section also has oversight over Transportation Network Companies.

**C. Motor Vehicle & Enforcement Unit (“MVE Unit”)**

The MVE Unit provides legal advice and representation to the Division of Motor Vehicles, Motor Vehicle Dealer Board, and the Gaming, Racing, and Lottery Commissions within the Department of Revenue.

**Division of Motor Vehicles.** Unit attorneys provide general counsel advice on rules and open records requests, and represent the Division in appeals of driver’s license revocation cases to the Colorado Court of Appeals and Supreme Court.

**Enforcement (Motor Vehicle Dealer Board, Limited Gaming Control Commission, and Racing Commission).** ITT Unit attorneys provide general counsel advice at regular open meetings and on matters including rulemaking, policies, and legislative matters. Attorneys represent these clients in administrative hearings, during the exceptions process, and on appeal. ITT Unit attorneys also defend clients in injunctive, declaratory judgment, and other civil actions in state district court.

**Lottery Commission.** ITT Unit attorneys provide general counsel advice and legal representation to the Lottery Division and Commission on a variety of issues including in connection with rulemaking.

**D. Public Utilities Commission Litigation Unit (“PUC Litigation Unit”)**

The PUC Litigation Unit represents the Trial Staff of the Public Utilities Commission (“PUC” or “Commission”) on fixed utilities litigation, including gas, electric, telephone, and water/sewer. The PUC regulates the rates, charges, services, and facilities of public utilities within the State.

Staff of the Commission consists of experts in fields including engineering, finance, and economics. When Staff enters an appearance as a party to a proceeding, Staff is divided into Advisory Staff and Litigation Staff. Representation of Litigation Staff includes providing legal advice on a daily basis and representation in cases before the PUC. Such cases include those where public utilities seek to increase the rates charged to the public, including residential, commercial, and industrial customers as well as in cases in which public utilities seek to build new facilities or extend existing facilities.

PUC Litigation Unit attorneys represent the PUC and its Commissioners in judicial review actions; in civil actions commenced by or against the PUC in state and federal courts (except civil actions for damages against the PUC and/or PUC Commissioners, which are litigated by attorneys in the Tort Litigation Unit); and in federal administrative proceedings before the Federal Communications Commission, Federal Energy Regulatory Commission, and the Surface Transportation Board.

## II. HOT ISSUES

### A. Department of Revenue

#### TAXATION

Significant taxation cases handled by the GTE and ITT Units on behalf of the Department of Revenue include:

**Agilent Technologies Inc., v. Dep’t of Revenue.** The Income Tax attorneys are representing Revenue in an appeal by an international corporation that operates through multiple related C corporations to various degrees inside Colorado, in other states, and in foreign countries. Revenue applied a combined or “unitary apportionment” accounting method that aggregated income from the unitary group of Agilent-related corporations and then apportioned part of that income to Colorado. Agilent’s Colorado corporate income tax was then calculated based on the percentage of its business in the state. Revenue’s assessments were upheld following an administrative hearing and Agilent has appealed to Denver District Court. The amount at issue includes \$7.6 million in tax, \$4.8 million in interest, and \$0.9 million in penalties.

**BP America Prod. Co. v. Dep’t of Revenue.** The Colorado Court of Appeals issued a decision affirming Revenue’s determination that a company may not deduct “return on investment” as a “cost borne” from its severance tax return in Colorado. BP’s petition for writ of certiorari is pending before the Colorado Supreme Court.

**Conservation Easement Tax Credit Litigation.** As of the end of FY 13-14, Revenue has prevailed in or settled the vast majority of over 120 consolidated appeals filed by taxpayers under House Bill 11-1300. The total amount recovered in these cases will approach \$100 million. HB-1300 strongly encouraged Revenue to waive penalties and interest for taxpayers who have acted in good faith to resolve these disputes and Revenue has waived such penalties and interest in the vast majority of settlements in accordance with this recommendation.

**Daimler Chrysler v. Dep’t of Revenue.** The Colorado Court of Appeals ruled in favor of Revenue in this dispute over whether Daimler Chrysler is entitled to a “bad debt” deduction for loans it made through motor vehicle dealers to consumers that were not repaid. The Court held that, because Daimler is neither a retail seller of motor vehicles nor a wholly-owned affiliate or subsidiary of such a seller, it was not entitled to the deduction. A petition for writ of certiorari is pending before the Colorado Supreme Court.

**DCP Midstream, LP v. Dep’t of Revenue.** The Denver District Court ruled against Revenue in this case concerning the interplay of two statutes, both granting an exemption from sales tax. The general, statewide exemption exempts “machinery” used in “manufacturing.” The “enterprise zone” exemption is allowed for purchases of machinery to be used in an enterprise zone for, among other things, mining, blasting, refining, processing and beneficiation of natural resources. The Court held that “processing” natural gas may also be exempt outside an enterprise zone. Revenue did not appeal the decision.

**Direct Mktg Ass’n v. Brohl.** The U.S. Supreme Court has granted the DMA’s petition for certiorari in which it seeks reversal of the Tenth Circuit’s decision last year finding that the Tax Injunction Act (“TIA”) bars the federal court’s jurisdiction to hear claims that would restrain the collection of the state’s tax. DMA filed suit in 2010 challenging Colorado’s law which was enacted to promote compliance with and increase collection of the State’s use tax. The law requires Internet and remote retailers to notify their Colorado customers that the retailer does not collect the State’s sales or use taxes and that the customer may owe tax on their purchase and requires retailers to submit . The federal district court issued a permanent injunction finding that the law violates the dormant Commerce Clause. But the Tenth Circuit held that the district court lacked. The U.S. Supreme Court will decide whether the TIA or principles of comity compelled dismissal of the federal case. Meanwhile, the Denver District Court has preliminarily enjoined the law and that case is stayed pending resolution of the DMA’s U.S. Supreme Court appeal.

**GE Wind v. Dep’t of Revenue.** The case arose from a wind farm sold by GE Wind and erected and installed by GE Wind in Prowers County. In the first phase of a bifurcated tax appeal, the Denver District Court held that the \$197 million sale was subject to Prowers County sale tax. The second phase of the appeal concerned whether certain portions of the transaction were non-taxable services and whether tax penalties and penalty interest were improperly calculated or otherwise should be abated. The parties filed cross-motions for summary judgment and briefed the issues. Shortly after the filing of briefs, the parties reached a confidential settlement agreement. Revenue is responsible for administering, collecting, and enforcing the Prowers County sales tax.

**No Over Taxation v. Hickenlooper.** In this lawsuit, plaintiffs challenge retail marijuana sales and excise taxes – arguing simultaneously that the taxes do not adequately implement Amendment 64 and that the taxes are invalid because of the federal law criminalizing marijuana sales. The lawsuit was filed against the Governor, Revenue, the City of Denver, and the Denver Treasury Department. GTE attorneys along with the Governor’s counsel represent the State defendants.

**Pub. Serv. Co. v. Brohl.** Following nearly a decade of litigation of PSCo’s sales tax refund claim, the Colorado Supreme Court affirmed Revenue’s determination that equipment, wire, and transformers purchased by PSCo to generate, transmit and distribute electricity do not qualify for the manufacturing machinery sales tax exemption. The Court reasoned that the state tax code treats generation of electricity as the provision of a service, not the manufacture of tangible personal property. Had it been granted, PSCo’s refund claim would have required the State to pay over \$20 million, including interest.

**Pioneer N.R. v. Dep’t of Revenue.** This case concerning whether gas gathering pipe qualifies for the enterprise zone machinery sales tax exemption is pending before the Colorado Court of Appeals.

**TABOR Foundation v. RTD, SCFD and Dep’t of Revenue.** The TABOR Foundation sought a preliminary injunction against implementation of House Bill 13-1272, which took effect January 1, 2014. HB 13-1272 adjusted the sales and use tax exemptions of RTD and SCFD so that they no longer differed from the state sales tax exemptions. In refusing to enter a preliminary injunction, the District Court found that

the plaintiff had failed to show a likelihood of success on the merits of its claims that the law violates TABOR. The hearing on plaintiff's request for a permanent injunction is scheduled for 2015.

## **ENFORCEMENT**

Significant enforcement cases handled by the GTE and MVE Units on behalf of the Department of Revenue include:

**Baker v. State of Colo.** The federal district court for the District of Colorado dismissed a challenge to Colorado's statutory limit for THC while driving a motor vehicle. Enacted during the 2013 legislative session, the law permits jurors to make the "permissible inference" of impairment if a blood test shows the driver's THC level is 5 nanograms or more. THC, or Delta 9-THC, is the psychoactive compound in marijuana that causes impairment. Plaintiff Brandon Baker, who purports to run a church founded on Rastafarian beliefs, brought suit against the State and Attorney General John Suthers alleging infringement of his and others' First, Fourth, Sixth, and Fourteenth Amendment rights. The case was dismissed for lack of standing and failure to state a claim.

**High Times v. Brohl.** GTE attorneys are defending Revenue's retail marijuana advertising regulations against a First Amendment challenge in the federal district court for the District of Colorado. The court determined that the plaintiffs had failed to establish standing and granted leave to amend the complaint. A motion to dismiss the second amended complaint is pending, and plaintiffs have filed a motion for leave to file a *third* amended complaint in the matter.

**Retail Marijuana Regulations.** GTE Unit attorneys advised the Marijuana Enforcement Division during this first year of implementation of the state regulatory scheme to regulate sales of retail marijuana following the passage of Amendment 64. Attorneys assisted with review of legislation, stakeholder meetings, development of regulations, and a variety of other unique legal issues. Attorneys also represented the Division in many medical marijuana licensure denial proceedings, and, in connection with those matters, defended the Division in several district court cases seeking injunctive relief.

**Scientific Games Int'l v. Dep't Personnel and Admin.** The Colorado Lottery awarded a 10-year contract for lottery jackpot gaming systems and services to GTECH Corporation. The incumbent vendor, SGI, protested the award and the Department of Personnel and Administration affirmed the Lottery's decision to award the contract to GTECH. SGI filed an appeal in Denver District Court. The matter is fully briefed and currently pending.

**Shortline Kia v. Arapahoe Motors of America and Arapahoe Kia v. Kia Motors of America.** Automobile manufacturer KIA Motors sent termination letters to two Colorado dealerships in December 2013, indicating its intention to terminate the franchise agreement in 90 days. The dealerships filed complaints with the Executive Director of Revenue requesting that she stay the termination of the franchise by issuing a cease and desist order until a hearing is held on whether the manufacturer violated Colorado law. On March 6<sup>th</sup>, the Executive Director issued a cease and desist order

allowing Shortline Kia to remain in business pending a hearing at the Office of Administrative Courts (“OAC”). The matter is currently pending at the OAC.

## **DIVISION OF MOTOR VEHICLES**

Significant matters handled by the MVE Unit on behalf of the Department of Revenue include:

**Francen v. Dep’t of Revenue & Hanson v. Dep’t of Revenue.** In this pair of companion cases, the Colorado Supreme Court upheld Revenue’s driver’s license revocations for two DUI suspects. The Court agreed with Revenue, holding: (1) the use of the term “probable cause” in the civil driving statutes does not provide DUI suspects with a general statutory right to challenge the lawfulness of the initial stop in civil administrative driver’s license revocation hearings; and (2) the exclusionary rule does not apply in these hearings.

**Hernandez v. Dep’t of Revenue.** The Colorado Court of Appeals affirmed an order revoking a driver’s license and held that a police officer, who witnesses a driver on the shoulder of the road having difficulty with his vehicle, may stop and offer assistance without turning the contact into an investigatory stop. The Court reaffirmed that a peace officer may properly issue a notice of revocation following a consensual stop based upon his own observation of the driver’s drunken condition.

**Senate Bill 13-251: Colorado Road and Community Safety Act.** MVE Unit attorneys are assisting DMV in implementing SB 251, which, effective August 1, 2014, allows persons not lawfully present in Colorado and those who are temporarily lawfully present to obtain a driver’s license or identification card. The documents must indicate on their face that they are not compliant with the federal REAL ID law and they cannot be used for identification for some purposes, such as obtaining federal benefits.

### **B. Department of Local Affairs, Property Tax Administrator**

Significant cases handled by the GTE Unit on behalf of the Property Tax Administrator within the Department of Local Affairs include:

**Pitkin County Bd. of Assessment Appeals and Prop. Tax Adm’r v. Roaring Fork Club, LLC.** This case concerns the proper appraisal methodology for a private, “non-equity” golf course. This type of course receives large up-front membership deposits, but little in the way of operating income for many years. The BAA previously rejected the methodology offered by the Club in favor of a methodology offered by the PTA. However, the Court of Appeals reversed. The PTA intervened to file a petition for certiorari to the Colorado Supreme Court concerning whether the BAA and PTA have discretion to consider the \$50,000,000 in membership deposits received by the Club as a relevant factor under the income approach to determining value of the property. A decision by the Colorado Supreme Court on whether to grant the petition is pending.

**Treehouse Condo. Ass’n v. Dep’t of Prop. Tax.** The Colorado Court of Appeals upheld the determination by the Board of Assessment Appeals that development rights held separately from surface rights constitute a taxable interest in real property, subject to assessment in Colorado. The Court relied on the Colorado constitution, which

states broadly that all real and personal property must be taxed unless exempted by law. Because the language in the assignment of the developments rights stated they constituted “a real property interest,” the Court rejected the taxpayer’s argument that these rights were mere contract rights or incorporeal hereditaments not subject to taxation.

### **C. Public Utilities Commission**

Significant cases handled by the PUC Litigation Unit include:

## **ENERGY**

**Public Service Company of Colorado (“PSCo”) Demand-Side Management Strategic (DSM) Issues Proceeding.** PSCo sought approval of a number of issues relating to its DSM efforts, including a reduction of energy savings goals established in 2011. The Company also sought approval to implement a Distribution Voltage Optimization (“DVO”) program, which it estimates would save some customers an average of 1.8% on their electric bills. Among the many decision points, the Commission adopted Staff’s recommendation for a flat energy savings goal of 400 GWh per year. While the Commission found DVO to be DSM, it agreed with Staff that not enough details were known about the proposal and that a separate application should bring those details forward. It also agreed with Staff that PSCo should not earn a separate, generous financial incentive for implementing the program and that costs should be recovered through base rates (rather than obtaining current cost recovery through the Demand Side Adjustment Clause, as proposed by the Company).

**PSCo 2014 Electric Rate Case.** Pursuant to the Clean Air - Clean Jobs Act, the PUC approved a number of modifications, early retirements, and replacement of existing coal electric generation in Colorado. The work has been ongoing since 2011. The largest investment in new facilities by PSCo is a large combined cycle unit at the Cherokee site, estimated at \$534 million. The project is scheduled to be completed by close of 2014. As a result, PSCo has requested that cost recovery for the project be included in rates through an electric rate case filed in June 2014.

**PSCo 2012 Gas Rate Case.** In December 2012, PSCo filed an Advice Letter with the Commission seeking approval of a set of three successive rate increases to natural gas base rates using forecasted information, which is commonly referred to as a future test year (“FTY”). This was the first time PSCo sought approval of increases referred to as a multi-year rate plan (“MYP”). An Administrative Law Judge heard significant testimony from Trial Staff and other parties, regarding whether it is in the public interest to use a FTY in lieu of historical test year (“HTY”) information as a basis to set rates. In December 2013, the PUC issued a decision rejecting PSCo’s proposed FTY and MYP and adopting a HTY, which Trial Staff supported.

**Net Metering.** PSCo must submit annual plans with the Commission demonstrating how it will comply with the State’s renewable energy standard (RES). As part of its 2014 Plan, the Company proposed a method of tracking and accounting for what it calls a “net metering incentive” to customers with rooftop solar. Currently, solar customers use PSCo’s utility generation and grid infrastructure, but do not pay for the costs associated with this use. As a result, the costs are shifted to other customers who do

not have solar systems. The Commission severed the net metering issue from the RES Plan proceeding and opened a separate proceeding to address net metering as it relates to all electric utilities in Colorado. In April 2014, the Commission conducted an Information Meeting, during which the parties presented suggestions for the purpose and structure of the proceeding. Subsequently, the Commission issued a request for legal briefs asking the parties to address six different questions on the scope of a utility's obligation to provide net metering to customers under Colorado law. Briefs are due July 31, 2014.

**PSCo Solar\*Connect Application.** PSCo proposes to create a new solar energy program that it asserts will allow customers who are unable to install solar generation at their premises to enjoy some of the benefits of solar energy. Under the proposal, PSCo will enter into a power purchase contract for the solar energy from a new solar power facility up to 50 megawatts (MW) in size. A customer that subscribes to the program would pay for a given amount of solar energy per month at a fixed price per kilowatt-hour, which the customer would then see as a credit toward his or her electric bill each month. PSCo customers would still pay for the costs of transmitting and backing up the solar power they use through the program, costs which are currently not paid by customers who install solar power at their homes and businesses. Under the proposal, the program would still receive a subsidy through the Renewable Energy Standard Adjustment (RESA), which is used to support the Company's other renewable energy programs. A hearing is scheduled for November 2014.

**PSCo Voluntary Programs in Boulder.** In January 2014, the City of Boulder served PSCo with a Notice of Intent to Acquire PSCo's electric distribution system in Boulder, which is the first step that the City must take to exercise the power of eminent domain. PSCo asserts that, if the City were to condemn PSCo's system in Boulder and create its own municipal utility as it plans to do, the new municipal utility would benefit from the voluntary solar and energy efficiency programs that PSCo currently provides to all of its customers, including its customers in Boulder. Among other proposals, PSCo asks the Commission to allow it to include a clause in all future contracts with customers who install solar at their home or business that will notify them that PSCo will have no obligation to purchase these customers' solar energy if Boulder ultimately condemns PSCo's system. PSCo also seeks to notify new participants in its solar community garden program in Boulder that PSCo will have no obligation to provide them with bill credits for solar energy if Boulder leaves the PSCo system. Finally, PSCo also asks the Commission to allow it to cap the amount of money it spends on energy efficiency programs in Boulder to an amount equal to the amount of money it collects for these programs from customers in Boulder. A hearing is scheduled for August 2014.

## **TELECOMMUNICATIONS**

**Telecom Reform Legislation.** In May 2014, the Governor signed into law five bills (HB14-1327 through HB14-1331) designed to reduce PUC regulation of telecommunication services in Colorado, and also, to establish a mechanism to facilitate the availability of broadband services to rural Colorado homes and businesses. A key aspect of the reform are changes to the High Cost Support Mechanism (HCSM), which is a statutorily-established fund designed to help ensure that rural areas of Colorado receive basic telephone service by subsidizing telecom providers in these same areas. Colorado

citizens pay into this fund via a charge on their telephone bills. The Reform Legislation created a new Broadband Fund to be administered by a new Broadband Board. The PUC can move HCSM funds to the Broadband Fund if the PUC deems certain areas of the state as “effectively competitive” insofar as basic telephone service.

**Proceedings to Examine Whether Areas of Colorado Are Receiving Effectively Competitive Basic Telephone Service.** Following a complex and lengthy proceeding, the Commission held that 56 geographic areas of Colorado receive effectively competitive basic telephone service. Most of these areas, known as “wire centers,” are located along the I-25 corridor from Fort Collins to Pueblo. The practical effect of designating wire centers as effectively competitive is that telecom providers serving customers in them stand to lose funding under the High Cost Support Mechanism. It is anticipated that during FY 2014-2015 the PUC will determine whether the remaining wire centers in Colorado (over 150) are also effectively competitive.

## **TRANSPORTATION**

Significant cases handled by the PUC Litigation and ITT Units include:

**MKBS LLC, d.b.a. Metro Taxi, Application to Transfer Control of Certificate of Public Convenience and Necessity (“CPCN”) to Supertaxi, Inc.** This case involves the issue of whether the transfer of a CPCN for certain taxi operations as part of an acquisition that resulted in the ownership of both local taxi companies by one holding company, met the legislative standard of promoting competition in the taxi industry. Trial Staff questioned whether, without some limits on the number of vehicles, a monopoly would exist of such size as to drive out all competition. Commission rules require that any transfer of authority cannot result in duplication of services or overlapping geographical areas of service. Staff requested that the Administrative Law Judge set the number of vehicles to be operated under the transferred CPCN to be the number of vehicles actually used rather than the number of vehicles listed as authorized on the certificate. A decision is pending.

**PUC v. Epler.** The PUC has directed the Transportation Attorneys to file a suit in Denver District Court for an injunction to prohibit Paul Epler from operating as a towing carrier as that term was defined under the repealed towing carrier statutes. The PUC found that Mr. Epler is permanently ineligible to be issued a towing carrier permit under the reenacted motor carrier statutes. The Commission seeks an injunction prohibiting Mr. Epler from owning, managing, operating or controlling a towing carrier.

## **I. BACKGROUND INFORMATION: CIVIL LITIGATION AND EMPLOYMENT LAW SECTION**

The employees of the section defend all state agencies, institutions of higher education, officials, and employees in litigation in state and federal court, as well as administrative hearings. The section also acts as general counsel to the Department of Personnel and Administration, Division of Risk Management (Risk Management), the Colorado Department of Corrections (CDOC), the Colorado State Board of Parole (Parole Board), the Colorado Department of Public Safety (CDPS), the Colorado Civil Rights Division (CCRD), the Colorado Transportation Commission, and the Colorado Department of Transportation (CDOT), providing quick and thorough legal advice regarding the many issues that arise on a daily basis. The section advises all state agencies and institutions of higher education regarding employment, personnel and workers' compensation matters. The section is divided into six units: Corrections and Public Safety, Employment Personnel and Civil Rights, Employment Tort, Tort Litigation, Transportation and Workers' Compensation. A brief description of each unit follows.

### **Corrections and Public Safety Unit:**

The Corrections and Public Safety Unit provides representation to the CDOC, the Parole Board, and the various divisions of the CDPS including the Colorado State Patrol (CSP), the Colorado Bureau of Investigation (CBI), the Division of Criminal Justice, the Division of Fire Prevention and Control, and the Division of Homeland Security and Emergency Management. The Unit defends inmate lawsuits involving various issues, including constitutional rights, time computation, prison discipline proceedings, *habeas corpus* petitions, parole and contract-related matters. The Unit also provides representation to all divisions the CDPS. Unit lawyers provide general legal advice to the CDOC, Parole Board, CSP, CBI, the Division of Criminal Justice, the Division of Fire Prevention and Control, and the Division of Homeland Security and Emergency Management on a daily basis on matters such as open records requests, environmental issues, sentencing issues, internal discipline, and procedural matters, compliance issues, and administrative regulations.

### **Employment Personnel and Civil Rights Unit:**

The Employment Personnel and Civil Rights unit defends state agencies and institutions of higher education in administrative hearings before the State Personnel Board and before the appellate courts in matters involving classified employee grievances and appeals of disciplinary actions. The cases involve claims arising from the Colorado Constitution, the State Personnel System Act, the state whistleblower act, the Colorado Anti-Discrimination Act, and related federal and state statutes. The attorneys also provide advice and risk reduction training to state agencies and institutions of higher education on issues such as hiring,

managing, and disciplining employees, and represents state agencies and institutions of higher education when a custodian of records or employee receives an personnel-related subpoena. The unit provides legal advice to the Colorado Civil Rights Division (CCRD) within the Department of Regulatory Agencies in connection with CCRD's investigation of charges of employment, housing, and public accommodations discrimination and cases brought based as a result of those investigations. The unit also assists CCRD on all transactional legal matters. The unit prosecutes civil rights cases through all stages of appeal and defends challenges to the authority of the Colorado Civil Rights Commission.

### **Employment Tort Unit:**

The Employment Tort unit defends state agencies, institutions of higher education, and employees in state and federal court employment litigation. The attorneys handle the cases from inception through appeal. The cases involve claims arising under a myriad of federal and state statutes, including Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Fair Labor Standards Act, The Family Medical Leave Act, the Equal Pay Act, the Age Discrimination in Employment Act, the state whistleblower act, and other employment laws as well as federal civil rights laws. The attorneys also provide advice and risk reduction training to state agencies and institutions of higher education regarding employment law. The unit provides day to day advice to Risk Management on questions of coverage, indemnity, settlements, and conflicts.

### **Tort Litigation Unit:**

The Tort Litigation unit defends state agencies, institutions of higher education, and employees in lawsuits seeking damages for personal injury and property damage, and those brought pursuant to federal law (except for employment claims). The unit also provides day to day advice to Risk Management on questions of coverage, indemnity, settlement, and applicability of the Colorado Governmental Immunity Act (CGIA). Members of this unit aggressively defend the state and seek to minimize the monetary liability of the state in a variety of law suits. In addition, the unit provides most of the Conflicts Counsel services to regulatory agencies and boards in cases where line attorneys act as prosecutors in regulatory actions before the agencies and boards and are therefore prevented from advising the decision makers.

### **Transportation Unit:**

The Transportation unit acts as a general service law firm to the CDOT and the Transportation Commission, with the exception of personnel and tort matters. The unit also represents the Colorado Bridge Enterprise and the Colorado High Performance Transportation Enterprise, which are government-owned enterprises

and divisions within CDOT. The members of the unit advise CDOT regarding a myriad of legal issues. The unit prosecutes all condemnation actions, defends inverse condemnation cases, and administrative actions. The unit also handles access control, highway beautification, and billboard location disputes, and protests brought under the Procurement Code. The unit advises CDOT in construction matters and represents CDOT in construction dispute review boards, arbitration and litigation. The unit also provides advice regarding environmental and real estate issues and defends and negotiates settlements in these areas. Members of the unit review, revise, and approve CDOT contracts, assist in drafting and negotiating contracts, including public-private partnership contracts, and assist in rulemaking, legislation and any other legal matters that arise.

### **Workers' Compensation Unit:**

The Workers' Compensation unit works with Risk Management and its third party administrator to defend state agencies, institutions of higher education, and employees in workers' compensation matters. The attorneys manage litigation from inception through hearings and appeals, including fully contested claims, challenges to specific disability and medical benefits, penalty allegations, petitions to review, and cases with subrogation or employment law issues. The attorneys also represent the Special Funds Unit of the Department of Labor and Employment, Division of Workers' Compensation and the Subsequent Injury fund and Major Medical Fund in workers' compensation cases. The attorneys provide day-to-day legal advice to Risk Management's Workers' Compensation Division, its third party administrator, state agencies and the Special Funds Unit, regarding workers' compensation law, liability exposure and settlements.

## **II. PRIOR YEAR LEGISLATION**

### **HB 1037: ENFORCING LAWS AGAINST DESIGNER DRUGS**

This bill prohibits the distribution, dispensing, manufacturing, display, offer, or sales of any product labeled as incense or any other trademark if the product contains synthetic cannabinoids. It establishes civil penalties of between \$10,000 and \$500,000 for violations (deceptive trade practices). Each individually packaged product is considered a deceptive trade practice violation. Penalties increase to between \$25,000 and \$500,000 for persons who sell or distribute these products to a minor who is at least two years younger than the violator. Beginning September 1, 2014, the CBI is required to purchase and maintain field test kits and make them available to local law enforcement agencies and the Liquor Enforcement Division of the Department of Revenue.

### **HB 1044: PAROLEE TAMPER WITH ELECTRONIC MONITORING DEVICE**

The bill codifies current CDOC practice and specifies that if a Community Parole Officer has probable cause to believe that a parolee who is under the supervision of the Community Parole Officer has removed or tampered with an electronic monitoring device that the parolee is required to wear as a condition of parole, the parole officer shall either make an immediate warrantless arrest of the parolee, except that, before making such an arrest the Community Parole Officer shall first determine that the notification of removal or tampering was not nearly the result of equipment malfunction. Furthermore, the bill indicates that not later than twelve hours after acquiring probable cause of a tamper alert, that the Community Parole Officer notifies a law enforcement agency with jurisdiction over the parolee's last known address that the parolee is subject to an immediate warrantless arrest.

### **HB 1095: CBI CYBER CRIME JURISDICTION**

This bill authorizes the CBI to conduct criminal investigations related to computer crime upon the request of law enforcement officials or the Governor, or upon its own discovery of such crime. The CBI is charged with developing and collecting information about computer crime to assist in the identification, charging, and prosecution of criminal offenders, and to report its findings to the appropriate law enforcement agencies. It must provide awareness training and information concerning cyber-security and security risks to the information technology industry. At least annually, the CBI must also prepare a report of its activities and outcomes for use by local law enforcement agencies or the Governor.

### **HB 1166: RENEWAL OF CONCEALED HANDGUN PERMITS**

Under current law, a person who possesses a concealed handgun permit or a temporary emergency concealed handgun permit must renew the permit with the county sheriff who originally issued it. HB 1166 allows a permit holder to renew a non-temporary permit with the sheriff in the location in which he or she resides, maintains a secondary residence, or owns or leases property for business purposes. The bill also allows a permit holder to renew a temporary permit with the sheriff in the location in which he or she resides or in which the circumstances giving rise to the emergency exist. Under the bill, in order to renew a permit in a new location, the applicant must submit a legible photocopy of the permit with his or her renewal application. In addition, the renewing sheriff must contact the office of the sheriff who originally issued the permit and confirm that it has not been revoked or suspended.

### **HB 1171: MEDICAL EVIDENCE IN SEXUAL ASSAULT CASES RULES**

Under current law, CDPS is required to promulgate rules regarding standards for consent for the collection, testing, and release of test results of forensic medical evidence in sexual assault cases. The CDPS was also to develop consent forms that

notify persons of the potential effects of and require acknowledgment of consent for each step of the process. HB 1171 clarifies that the consent information is to be included in the form, but that the consent form itself is not required to be part of the promulgated rules.

### **HB 1172: BACKGROUND AND HIRING PROCESS FOR CDOC AND CDPS**

This bill clarifies hiring practices by the CDOC and the CDPS affecting persons with criminal convictions. Under current law, most state agencies, except the CDPS, may not perform a background check until the agency determines that an applicant is a finalist or has made a conditional offer of employment to the applicant. This bill includes CDOC in this exception. The bill also clarifies that, at any stage of the hiring process, if the CDOC or CDPS determines an applicant has been convicted of a crime, it must consider the factors listed in statute as reasons for disqualification. These factors include the nature of the conviction, its relevancy to the position's duties, any information regarding the applicant's rehabilitation or good conduct, and the amount of time lapsed since the conviction.

### **HB 1191: HIT AND RUN MEDINA ALERT PROGRAM**

This bill allows CDPS/CBI to establish a program to alert the public when a hit-and-run accident involving serious bodily injury or death occurs and law enforcement needs assistance in locating the suspect's vehicle. CDPS is authorized to promulgate rules and implement the program, referred to as the Medina alert, on or after January 1, 2015.

### **HB 1229: RETAIL MARIJUANA FINGERPRINT CHECK LOCAL AUTHORITY**

This bill conforms retail marijuana licensing law with medical marijuana law by allowing a local jurisdiction to submit fingerprints to the CBI for the purpose of conducting fingerprint-based criminal history record checks for an individual applying for a retail marijuana establishment license. If the individual's fingerprints are unclassifiable, the local jurisdiction may acquire a name-based criminal history check.

### **HB 1260: PENALTIES FOR SEX OFFENSES AGAINST A CHILD UNDER 12 “JESSICA’S LAW”**

This bill requires an indeterminate sentence for a class 2, class 3, or class 4 felony sex offenses when the act includes sexual intrusion or sexual penetration against a child under the age of 12 when the offender was an adult and at least ten years older than the child. Under the bill, sentencing for these sex offenses varies by felony class level, as follows:

- at least 10-16 years and up to a maximum of natural life for a class 4 felony;
- at least 18-32 years and up to a maximum of natural life for a class 3 felony; and
- at least 24-48 years and up to a maximum of natural life for a class 2 felony.

If the defendant is placed on parole, the Parole Board is required to order that the offender wear an electronic monitoring device for the duration of his or her parole.

### **HB1172: CONCERNING EXEMPTING CERTAIN PUBLIC SAFETY DEPARTMENTS FROM CERTAIN STATUTORY REQUIREMENTS RELATED TO THE IMPACT OF A CRIMINAL CONVICTION ON STATE EMPLOYMENT OPPORTUNITIES.**

This act amends § 24-5-101, C.R.S. to exempt the CDPS and CDOC from certain prohibitions against considering convictions in the hiring of state employees. It also allows the two departments to determine whether a conviction will disqualify an applicant for a position at any stage of the hiring process, rather than just at the finalist stage.

### **HB 1273: HUMAN TRAFFICKING**

This bill repeals, reenacts, and makes changes to existing laws concerning human trafficking. Currently, human trafficking of an adult is a class 3 felony, unless the victim is in the United States illegally, in which case it is a class 2 felony. Human trafficking of a child is a class 2 felony. Current law also makes the crime of coercion of involuntary servitude a class 6 felony. The bill changes the definition of the crime of human trafficking of an adult and of a child to include the distinction that the trafficking was for the purpose of either involuntary or sexual servitude. Under the bill, human trafficking of an adult for involuntary servitude or for sexual servitude is a class 3 felony and a class 2 felony if the victim is a minor. The bill removes the offense of coercion of involuntary servitude from law, but includes the definition of coercion in both cases of human trafficking for involuntary or sexual servitude. Human trafficking of a minor for sexual servitude is considered to be a “sex offense against a child” for the purposes of the statute of limitations, which means there is no limit on the period of time in which criminal proceedings may be initiated against a defendant. If an offender is convicted of human trafficking for involuntary servitude or for sexual servitude, the court must order that restitution be paid to the victim, if appropriate, even if the victim is unable to receive payment. Finally, the bill creates the Colorado Human Trafficking Council within the CDPS and specifies the council's membership and duties. The council is required to meet at least four times per year. The council must make recommendations to the Judiciary Committees of the General Assembly by January 1, 2016, regarding whether or not a process should be established for certifying organizations that

provide services to victims of human trafficking, and if a grant program should be established to assist these organizations. The council is also required to develop an implementation plan for a public awareness campaign to educate the public about human trafficking, and distribute victim services contact information to places where victims are likely to see it; consider and recommend, as the council deems necessary, any statutory changes to more easily punish and prosecute persons who engage in human trafficking, and better protect victims; develop training standards and curricula for organizations that provide assistance to victims of human trafficking, for persons who work with victims, and for law enforcement agencies; identify best practices for the prevention of human trafficking; annually report to the Judiciary Committees of the General Assembly on the prevalence of human trafficking and the efforts of law enforcement to combat human trafficking in the state; on or before January 1, 2017, and on or before January 17 of each year thereafter, submit a report to the Judiciary Committees of the General Assembly summarizing the activities of the council during the preceding year; and research and pursue funding opportunities for the council.

### **HB 1309: REPURPOSING THE AMBULATORY SURGERY CENTER**

This bill allows the CDOC to use its day surgery center building at the Denver Reception and Diagnostic Center as an auxiliary medical facility and to amend or modify its lease purchase agreement as necessary. It also clarifies that the CDOC may use savings for clinical services to make payments on the lease-purchase agreement.

### **HB 1327: CONCERNING THE DEPLOYMENT OF BROADBAND TECHNOLOGY.**

This bill exempts from state sales and use taxes all purchases by a telecommunications company of equipment to provide broadband services and allows local jurisdictions the option of exempting these taxes. The bill also requires state and local government agencies, including coordination by the CDOT, to provide notice of trenching activity to broadband providers, except in emergencies, and clarifies that broadband service providers may utilize public rights-of-way for broadband facilities to the same extent as other telecommunication providers.

### **HB 1340: STATE TOXICOLOGY LABORATORY**

This bill requires the CBI to operate a state toxicology laboratory on or before July 1, 2015. The purpose of the new laboratory is to assist local law enforcement agencies in the enforcement of laws for driving under the influence of alcohol or drugs. The CBI is authorized to recover its direct and indirect costs through fees for the services performed. Fees are to be credited to the newly created State Toxicology Laboratory Fund. The bill requires that a portion of moneys annually

appropriated to the Colorado Department of Public Health and Environment from the Law Enforcement Assistance Fund for similar purposes to instead be appropriated to the CDPS to pay the costs of toxicology laboratory services. Under current law, the State Board of Health in the CDPHE promulgates administrative regulations for the certification of laboratories. This bill states that these regulations may waive specific certification requirements for laboratories that are accredited by the American Board of Forensic Toxicology or the International Standards Organization.

#### **HB 1343: CONCERNING WORKERS' COMPENSATION COVERAGE FOR POST-TRAUMATIC STRESS DISORDER FOR PEACE OFFICERS.**

This bill creates a task force to research work-related peace officer post-traumatic stress disorder. The task force will report findings, and make recommendations including best policies and practices for public employers of peace officers in Colorado including identification, prevention, treatment, covered workers' compensation claims, standardized pre-employment psychological screenings, and education of both management and employees on this mental health illness. Report and recommendations due by January 15, 2015

#### **HB 1355: CONCERNING DEPARTMENT OF CORRECTIONS REENTRY INITIATIVES FOR SUCCESSFUL REINTEGRATION OF ADULT OFFENDERS INTO THE COMMUNITY**

This bill directs the CDOC to develop and implement initiatives to decrease recidivism, enhance public safety, and increase each offender's chances of achieving success upon his or her release. Subject to available appropriations, on and after July 1, 2014, these initiatives are to include: (1) programs to assist offenders in a correctional facility to prepare for release to the community; (2) efforts to assist each offender's transition from a correctional facility into the community; and (3) operational enhancements, including equipment, training, and programs to supervise offenders in the community. The bill also stipulates that on and after January 1, 2015, the CDOC is required to develop and implement a grant program to provide funding to community organizations that provide reentry services to offenders. The grant program is set for sunset review and repeal by September 1, 2018. Finally, the bill contains a reporting requirement and after January 1, 2016, the CDOC is required to present information on the CDOC's progress in implementing the requirements of House Bill 14-1355 during its annual presentation before the Joint Judiciary Committee of the General Assembly.

#### **HB 1378: POSTING INTIMATE PHOTOS ON THE INTERNET**

This bill creates two new class 1 misdemeanor crimes related to posting a private image or video of a person over the age of 18 through the use of social media. Each

crime requires that the private image or video be posted without the victim's consent and the actor must have known or should have known that the victim had a reasonable expectation of privacy. If the conduct is related to a newsworthy event, it is not an offense. In addition to any other sentence imposed, the court is required to levy a minimum fine of up to \$10,000 for an offense. Fines are credited to the Crime Victim Compensation Fund. The bill allows a person whose private images have been posted to bring a civil action against the person who caused the posting. The court may provide injunctive relief, the greater of \$10,000 or actual damages incurred as a result of the posting of the private images, exemplary damages, and reasonable attorney's fees and costs. No liability is imposed on the provider of an interactive computer service, an information service, or a telecommunications service for content provided by another person. The first new crime is posting a private image for harassment. To commit this crime, the conduct must have resulted in serious emotional distress to the victim. The second new crime is posting a private image for pecuniary gain, which requires that the actor intended to obtain a pecuniary benefit from any person as a result of posting, viewing, or removal of the private images. The bill sets forth a process and requirements for sealing of criminal conviction records when the offender has completed his or her sentence, including payment of any fine, and has not been convicted of another criminal offense for at least five years after completion of the sentence.

### **HB 1383: CONCERNING THE NUMBER OF PHYSICIANS THAT MUST BE PROVIDED TO AN INJURED EMPLOYEE TO SELECT A TREATING PHYSICIAN IN WORKER'S COMPENSATION CASES**

Current law requires the employer provide a list of at least two physicians and/or corporate medical providers to an employee from which to select a treating physician. Effective April 15, 2015, this law requires four physicians or corporate medical providers. There is an exception if there are less than nine physicians or corporate medical providers within 30 miles of the employers' place of business who are willing to treat an injured employee, in which case the employer may designate two physicians/corporate medical providers.

### **SB 8: CREATE WILDFIRE INFORMATION AND RESOURCE CENTER**

This bill creates the Wildfire Information and Resource Center (WIRC) in the CDPS. Within the department, the Division of Fire Prevention and Control (DFPC) is charged with collecting wildfire-related information and links in an on-line resource for homeowners, fire professionals, the media, and educators. The WIRC must present information related to: current wildfires and prescribed burns; wildfire prevention and preparation; statewide fire conditions; fire training; funding for wildfire mitigation; and other research and information at the discretion of the director of the DFPC. The DFPC is authorized to engage in a public-private

partnership and to utilize grants and donations for the WIRC. However, implementation of the WIRC does not rely on gifts, grants, or donations.

#### **SB 59: STATUTE OF LIMITATIONS CRIME RELATED TO SEX CRIMES**

Under current law, certain offenses that accompany sex offenses are subject to a statute of limitations, while the sex offense is not. This bill would eliminate the statute of limitations for an offense that accompanies a sex offense.

#### **SB 64: CONCERNING THE USE OF LONG TERM ISOLATED CONFINEMENT FOR INMATES WITH SERIOUS MENTAL ILLNESS**

This bill prohibits the CDOC from placing a person with serious mental illness in long-term isolated confinement (administrative segregation) unless exigent circumstances are present. It also creates and specifies the composition of the new Serious Mental Illness in Long-Term Isolated Confinement Work Group to advise the CDOC on policies and procedures related to the proper treatment and care of offenders with SMI. The work group is to hold its first meeting prior to July 1, 2014, and meet at least semi-annually thereafter.

#### **SB 118: CONCERNING IMPROVING PROTECTIONS FOR INDIVIDUALS WITH DISABILITIES.**

This act brings the definition of “disability” and other definitions under the Colorado Anti-Discrimination Act to conform to corresponding definitions in the federal Americans with Disabilities Act of 1990 and the Americans with Disabilities Amendments Act of 2008. It increases the potential fine to \$3,500 for discrimination in places of public accommodation and housing, and for violations of the rights of an individual with a disability who uses a service animal.

#### **SB 121: ASSISTANCE TO LOCAL GOVERNMENT AFTER A DISASTER EMERGENCY**

Under current law, if a disaster emergency is declared by the federal government, federal aid is provided by the Federal Emergency Management Agency (FEMA) and other federal agencies. In order to receive moneys from federal agencies, the federal government typically requires that the affected unit of local government provide a certain percentage of matching funds. This bill allows the Governor to determine a percentage of state aid that can be made available to a local government to assist it in meeting the federal match requirement. As soon as practical, the Governor is required to notify the Joint Budget Committee of the source and amount of state moneys that will be contributed for this purpose.

#### **SB 138: CIVIL IMMUNITY FOR VOLUNTEERS AT EMERGENCIES**

Under current law, volunteer firefighters participating in firefighting efforts or providing emergency care, rescue, or assistance at the scene of an emergency, have limited immunity from potential civil damages. SB 138 extends the same limited immunity, granted to volunteer firefighters, to include other volunteers, as defined in the Volunteer Service Act. The immunity applies to all good faith efforts to respond to an emergency, and the exemption does not apply to grossly negligent or reckless acts or omissions.

### **SB 172: CONCERNING FIREFIGHTER HEALTH AND CIRCULATORY MALFUNCTION BENEFITS**

This bill provides for employer paid benefits for eligible firefighters who suffer cardiac or circulatory illness as the result of strenuous work events. It does not affect the determination of whether a heart attack is compensable under the Workers' Compensation Act. Workers' Compensation would receive an offset for any benefits paid to a worker under this section.

### **SB 191: CONCERNING PROCEDURES FOR RESOLVING WORKERS' COMPENSATION CLAIMS**

Effective July 1, 2014, the Director or ALJ can consider medical treatment guidelines to determine whether medical treatment is reasonable, necessary and related to a workers' compensation injury but may consider other factors as well. Settlement documents may be submitted by email. The time to set a hearing is extended from 100 to 120 days from setting date. The time to request an Order (Specific Findings of Fact and Conclusions of Law) is extended from seven business days from the date of the Summary Order to ten business days. The Director/ALJ may issue a subpoena for an out-of-state witness on a showing of good cause and may assess penalties against an out-of-state witness who fails to appear. The Director, ALJ or panel has 30 days from receipt of a remand to issue an order consistent with the remand. If requested 3 business days in advance of an IME, the insurer must pay the claimant \$75 per day if he/she verifies that he/she will incur uncompensated wage losses as a result of attending the examination. The ATP must provide written notice via certified mail to the injured worker and insurer within 3 business days from the date the ATP refuses to treat for non-medical reasons if the injured worker requires medical treatment to cure or relieve the effects of the injury. The Notice must state the reasons for the discharge and offer to transfer the medical records to the new ATP. The lump sum award is increased from \$60,000 to \$80,868.10, including a lump sum for death benefits up to \$161,734.15 in a proportionate amount if there are multiple dependents.

### **SB 213: STATUTE OF LIMITATIONS FOR VEHICULAR HOMICIDE**

This bill modifies the statute of limitations for certain cases of vehicular homicide. For criminal defendants who also leave the scene of the accident, the statute of limitations for both crimes is increased from five years to ten years. For civil cases of wrongful death involving vehicular homicide, if the defendant also committed the offense of leaving the scene of an accident that resulted in the death of a person, the statute of limitations is increased from two years to four years. Legislative service agencies are required to do a post-enactment review of the bill five years after its implementation.

## **SB 215: DISPOSITION OF LEGAL MARIJUANA RELATED REVENUE**

This bill creates the Marijuana Tax Cash Fund (MTCF) for tax revenue collected in connection with the retail marijuana industry. These taxes include: excise tax revenue on wholesale marijuana in excess of \$40 million per year; the 10 percent sales tax revenue less 15 percent to local governments; and sales tax revenue from the 2.9 percent state sales tax on both retail and medical marijuana. Funds in the Marijuana Cash Fund (MCF) not attributable to licensing fees will be transferred to the MTCF on July 1, 2014. Programs currently funded from the MCF in the Department of Law, Department of Public Health and Environment, CDPS and the Department of Revenue (DOR) will now be funded from the MTCF. A \$2.0 million transfer currently made from the MCF to the General Fund will now be from the MTCF. Funds in the MTCF cannot be appropriated for the fiscal year in which they were received by the state except the appropriation to the DOR for the direct and indirect costs of regulating medical and retail marijuana. Any money not appropriated to the DOR may be appropriated by the General Assembly based on the most recent estimate of revenue prepared by the staff of the Legislative Council or the DOR. Beginning in FY 2015-16, 93.5 percent of the moneys in the MTCF will be available for appropriation. The bill identifies the purposes for which moneys may be appropriated from the MTCF, which include: the study of law enforcement's activity and costs related to the legalization of retail marijuana; the coordination of the Executive Branch response to the legalization of retail marijuana; increasing the expertise and knowledge among prosecutors and law enforcement officials regarding the legal and regulatory issues surrounding the legalization of marijuana; obtaining health data through surveys or other means regarding marijuana and other drug use and monitoring the health effects of marijuana, including changes in drug use patterns and the emerging science and medical information relevant to the health effects associated with marijuana use; advanced roadside impaired driving enforcement training and drug recognition expert training for peace officers; developing and implementing marijuana education and prevention campaigns; providing inpatient treatment for adults who suffer from co-occurring disorders at the Colorado Mental Health Institute at Pueblo; increasing the availability of school-based prevention, early intervention, and health care services and programs to reduce the risk of marijuana and other substance use and abuse by school-aged children; funding community-based programs to provide marijuana prevention and

intervention services to youth; funding local judicial district-based programs to provide marijuana prevention and intervention services to pre-adjudicated and adjudicated youth; expanding the provision of jail-based behavioral health services in underserved counties and to enhance the provision of jail-based behavioral health services to offenders transitioning from jail to the community to ensure continuity of care; and providing substance use disorder treatment services for adolescents and pregnant women. The bill appropriates funds for the following: creating the Office of Marijuana Coordination in the Governor's Office; two marijuana education and prevention campaigns conducted by the DPHE; creating the School-based Substance Abuse Prevention and Intervention Grant Program in the Department of Health Care Policy and Financing ; expanding the Tony Grampsas Youth Services Program in the Department of Human Services; and providing child welfare training specific to issues arising from marijuana use and abuse. The bill also authorizes the Division of Criminal Justice in the CDPS roll-forward spending authority for up to \$45,000 of a current year appropriation from the MCF to FY 2014-15 for gathering data and studying law enforcement's activity and costs related to the implementation of retail marijuana.

**SB 223: DIRECTING THE CONTROLLER TO PAY THE FULL AMOUNT OF DAMAGES AWARDED BY SPECIAL MASTERS IN THE LOWER NORTH FORK WILDFIRE LITIGATION, NOTWITHSTANDING THAT SUCH AWARDS INCLUDED HITHERTO BARRED PAYMENTS FOR NON-ECONOMIC DAMAGES AND INTEREST IN EXCESS OF DAMAGES CAPS OF C.R.S. §24-10-114(1).**

By this bill, the General Assembly paid all damages to property owners who resisted efforts to settle claims by directing parties through the Claims Board mediation process, according to amounts awarded by the Special Masters in the case, notwithstanding that amounts that had been barred by statute in the settlement process for interest and non-economic damages were thereby paid. The result has been to reward those who resisted reasonable settlement efforts under statutory guidelines and penalize those who settled in good faith. As a result, we are seeing an effort by those who reasonably settled claims to reopen the case and set aside settlements in hope of obtaining compensation for non-economic damages and interest in excess of tort claim caps. We are watching to see if the bill will affect litigation of tort claims against the state outside of the Lower North Fork Wildfire litigation and if it will affect our ability to reasonably settle these claims in the future.

### **III. HOT ISSUES**

#### **Lower North Fork Wildfire Litigation**

At the end of Fiscal Year 2014, we had essentially completed litigation of property owner claims in the Lower North Fork Wildfire Litigation. Payment of claims to non-settling property owners in excess of limitations previously set on claims settlements may mean additional litigation as those who took settlements in good faith attempt to reopen litigation and set aside settlements to be paid their non-economic damages and interest, like those who resisted settlement. In addition, 22 insurers who brought claims for inverse condemnation have commenced appeals from the order dismissing those claims, and we will be engaged in appellate litigation to defend that order. In the event that the order is reversed, we will be engaged in litigation and trial to defend the inverse condemnation claims.

### **Possible effect on tort claims from increased damages caps.**

During the coming fiscal year we will begin to see whether substantially increased damages caps in C.R.S. §24-10-114(1) will have an effect on lawsuits filed against state agencies and state employees and on the rate of settlement of those claims versus trial.

### **Challenge to Exempt Positions in Higher Education**

Article XII, section 13 of the Colorado Constitution provides that “administrators” of educational institutions and departments “may be exempt by law” from the state personnel system. Section 24-50-135, C.R.S. implements this provision by allowing presidents of institutions of higher education to exempt certain “professional” positions and positions funded by “auxiliary activities.” The definitions of “professional” and “auxiliary activities” are defined in the statute. Colorado WINS, the exclusive employee organization for state classified employees, first challenged the facial constitutionality of the statute in a petition for declaratory action to the State Personnel Board. After the petition was denied for lack of jurisdiction, Colorado WINS filed challenges to the statute as it was applied to several different positions at Colorado Mesa University, Adams State University, and the Colorado School of Mines. Colorado WINS withdrew its claims against Colorado School of Mines, with prejudice. The remaining claims against Colorado Mesa University and Adams State University are before the State Personnel Board on motions for summary judgment, and are subject to appeal to the Court of Appeals.

### **Anticipated Increase in Discrimination Claims before the State Personnel Board and Colorado Civil Rights Division**

On January 1, 2015, the remedies created in HB 13-1136 will take effect. This bill expanded the remedies for persons found to be discriminated against in employment to include compensatory damages, punitive damages in certain situations, and attorney fees. The bill requires state employees to go to state court to obtain additional remedies after they receive a decision finding discrimination from the state personnel board. We anticipate that this increased liability exposure will likely increase the number of discrimination claims filed with the State Personnel Board and with the Colorado Civil Rights Division during the second half of the fiscal year.

### **Colorado Bridge Enterprise litigation**

The TABOR Foundation sued the CBE, the Transportation Commission and individual Transportation Commissioners in their official capacities, claiming that the Bridge Safety Surcharge authorized by SB09-108 constituted a “tax” rather than a “fee” requiring statewide voter approval and also claiming that \$300 million in bonds issued by the Bridge Enterprise in December 2010 to fund “designated bridge” repair and reconstruction projects required voter approval. The lawsuit sought a declaration that the Bridge Safety Surcharge and bonds are illegal and should be enjoined. A two-day bench trial held before Judge Michael Martinez of Denver District Court in May 2013. The lawsuit was defended by both the Transportation unit and outside counsel retained on behalf of the Transportation Commission and the individual Transportation Commissioners. Judge Martinez issued his final order in July 2013 and CBE won on all issues. Judge Martinez concluded that the bridge safety surcharge was indeed a fee and not a tax and held that CBE was an “enterprise” under TABOR because it did not receive impermissible “grants” from CDOT exceeding the 10 percent limitation on state and local government revenue in any fiscal year. The TABOR Foundation appealed Judge Martinez’s order and the appeal was fully brief in late 2013 and early 2014 and oral argument was held before a Colorado Court of Appeals’ panel on July 8, 2014. The Court of Appeals’ opinion is expected by the end of 2014.

### **High Performance Transportation Enterprise.**

The HPTE worked throughout most of FY14 to pursue a concession agreement for construction, operation and maintenance of “managed lanes” on U.S. Highway 36 and I-25. Financial close on this concession deal was reached in late February 2014. The Transportation unit actively assisted with the drafting of the concession agreement and negotiation of concession terms. An entity entitled the Drive Sunshine Institute filed a lawsuit against HPTE and others as a result of the US 36 concession deal, but has not served the lawsuit. HPTE has started to work, and will continue through FY15, on a potential public-private partnership to replace the I-70 viaduct in Denver.

## **Outdoor Recreation**

The CDOC is currently litigating several cases, including a class action lawsuit relating to outdoor recreation for offenders in segregation. The federal courts have held that extended denial of outdoor recreation constitutes a violation of the Eighth Amendment. The CDOC's maximum security facility does not have outdoor recreation areas for inmates. The litigation is proceeding rapidly and CDOC is attempting to moot the issue before any additional adverse rulings occur.

## **Mentally Ill Offenders and housing offenders in Administrative Segregation for extended periods of time**

The CDOC has considerably revised its policies pertaining to housing mentally ill offenders in Administrative Segregation, and housing offenders in general in Administrative Segregation for extended periods of time. The CDOC has several cases relating to extended confinement in Administrative Segregation. In addition, recent trends across the country as well as communications from the ACLU here indicate that litigation relating to extended confinement in administrative Segregation is detrimental to offender's mental health and exacerbates mental health problems in offenders with existing mental health problems. Revisions of the CDOC policy have reduced the inmate population in segregation from 1,505 in 2011, to 221 as of July of 2014. CDOC is also no longer housing offender in "Administrative Segregation." Rather, the new high custody designations are as follows:

Restrictive Housing Maximum Security Status: The most restrictive offender management status for those offenders who have demonstrated through their behavior that they pose a significant risk to the safety and security of staff and other offenders, as well as to the safe and orderly operation of general population. Maximum Security status is primarily used for offenders who have demonstrated through their behavior that they pose a risk to the safe and orderly operation of a general population correctional facility. *Maximum 12 months duration.*

Close Custody Management Control Unit (MCU): A close custody designation that provides an increased level of housing, supervision and control to maintain the safety of the public, volunteers, staff and offenders. Assignment to Close Custody Management Control Units (MCU) is primarily used as a progressive management assignment for offenders who are progressing from Restrictive Housing Maximum Security Status, as well

as for those general population offenders who have demonstrated, through their behavior, that they pose a significant risk to the safe and orderly operation of a correctional facility. *Includes cognitive behavioral programming.*

Close Custody Management Control Unit / High Risk (MCU/HR): A close custody designation that provides an increased level of housing, supervision and control to maintain the safety of the public, staff, volunteers, and offenders. Assignment to Close Custody Management Control Unit / High Risk (MCU/HR) is primarily used as an assignment for those offenders who through their actions have exhibited behaviors that pose a substantial and significant risk to the safety and/or security of the public, volunteers, staff and other offenders. *Includes cognitive behavioral programming.*

Close Custody Management Control Unit / Protective Custody (MCU/PC): A close custody designation that provides an increased level of housing, supervision and control to maintain the safety of the public, staff, volunteers, and offenders. Assignment to Close Custody Management Control Unit / Protective Custody (MCU/PC) is primarily used as an assignment for close custody offenders who have legitimate, validated and documented protective custody issues in accordance with AR 650-02, Protective Custody.

Close Custody Transition Units (CCTU): A temporary close custody designation/assignment for close custody offenders who have exhibited behavior that warrants the opportunity to receive cognitive programming and increased interaction for offenders to prepare them for placement in a less controlled environment. Assignment to Close Custody Transition Units (CCTU) is primarily used as a temporary (6-month) progressive management assignment for close custody offenders who are either progressing from Close Custody Management Control Units or for newly arrived offenders who score close custody on their initial intake classification. *Includes cognitive behavioral programming.*

## **Sentence Time Computation**

Sentence time computation and specifically the awarding, vesting, withdrawal, and application of good time and earned time credits remain a hot issue, both in the legislature and in the courts. On the litigation front, the application of good time credits earned by an offender and whether these credits apply to an offender's discharge date, or merely the date the offender becomes eligible for discretionary

parole is currently being litigated in the Colorado Supreme Court and in various district courts throughout the state. Amendments and enactments of various time credit statutes over time has resulted in confusion on proper application and warding of time credits. As a result the Corrections Unit has received inconsistent rulings on time computation issues. The CDOC in conjunction with the Attorney General's Office has put together a working group to amend, consolidate and simplify the earned time and good time statutes.

#### **IV. WORKLOAD MEASURES**

The workload measurements below do not reflect all areas of work these units address on behalf of clients. The measurements below are presented to provide a representation of the type and gravity of work each unit performs throughout each year.

##### **Corrections and Public Safety Unit:**

Workload Measure	Unit	FY 12 Actual	FY 13 Actual	FY 14 Actual	FY 15 Estimate	FY 16 Request
New cases	Corrections and Public Safety	336 (202 inmate, 93 Risk Mgmt, 41 advice, 0 assigned to outside counsel)	253 (145 inmate, 72 Risk Mgmt, 36 advice, 0 assigned to outside counsel)	300 (183 inmate, 83 Risk Mgmt, 26 advice, 8 Public Safety)	350	350
Billable hours		16,860	16,294	19,594	21,000	21,000

##### **Employment/Personnel and Civil Rights Unit:**

Workload Measure	Unit	FY 12 Actual	FY 13 Actual	FY 14 Actual	FY 15 Estimate	FY 16 Request
Personnel cases opened	Employment Personnel	240	233	232	250	275
Special funds (SIF and MMIF) cases opened		6	1	0		
Civil rights matters opened (including		18	12	10	15	15

hearing worthiness analysis and probable cause sufficiency analysis)						
Billable hours		18,690	19,579	19,609	21,000	21,000

### **Employment Tort Unit:**

Workload Measure	Unit	FY 12 Actual	FY 13 Actual	FY 14 Actual	FY 15 Estimate	FY 16 Request
New cases opened	Employment Tort	21 new cases with 123 claims	6 new cases with 12 claims	9 new cases with 27 claims	15 new cases with 105 claims	20 new cases with 140 claims
Cases and claims handled in-house		54 cases with 554 claims	43 cases with 174 claims	39 cases with 105 claims	40 cases with 280 claims	40 cases with 280 claims
Cases and claims handled by outside counsel		5 cases with 13 claims	5 cases with 13 claims	0 cases	1 case	1 case
Billable hours		9,940	7,435	6,878	7,500	8,500

### **Tort Litigation Unit:**

Workload Measure	Unit	FY 12 Actual	FY 13 Actual	FY 14 Actual	FY 15 Estimate	FY 156 Request
New cases opened	Tort Litigation	89	86	82	90	90
Notices of claims received and reviewed		1,843	1,835	1,773	1,850	1,850
Conflicts cases handled (new FTE added in FY 11)		60	60	58	63	63
Billable hours		19,397	20,115	20,646	20,700	20,700

**Transportation Unit:**

Workload Measure	Unit	FY 12 Actual	FY 13 Actual	FY 14 Actual	FY 14 Estimate	FY 15 Request
New cases filed	Transportation	41	39	48	40	40
Pending cases		42	35	37	45	45
Number of trials		0	3	2	2	2
Contested hearings		6	14	8	10	10
Condemnation cases resolved		14	16	15	15	15
Contracts reviewed		620	410	114	200	200
Billable hours		13,083	11,500	12,100	13,500	13,500

**Workers' Compensation Unit:**

Workload Measure	Unit	FY 14 Actual	FY 15 Estimate	FY 16 Request
New cases opened	Workers' Compensation	263 new cases	270 new cases	270 new cases
Cases and claims handled in-house		173 cases	250 cases	250 cases
Cases and claims handled by outside counsel		90 cases	20 cases	20 cases
Billable hours		7,472	10,800	10,800

## **I) BACKGROUND INFORMATION: NATURAL RESOURCES AND ENVIRONMENT SECTION (LSSA).**

### **Introduction to the Natural Resources and Environment Section**

The Natural Resources and Environment Section protects and defends the interests of Colorado and its citizens in all areas of natural resources and environmental law. The Section, on behalf of the Colorado Department of Natural Resources (DNR) and the Colorado Department of Public Health and Environment (CDPHE), represents and advises state agencies, boards and commissions who regulate the development, use and conservation of the State's natural resources and protect the quality of the environment.

Section attorneys, with the support of legal and administrative assistants, provide general legal advice and represent our clients on administrative matters, rulemaking hearings, transactional matters, enforcement actions, judicial proceedings and legislative matters. We help to protect legal interests in natural resources and ensure compliance with environmental laws.

### **CDPHE Clients**

#### **Water Quality & Radiation Unit**

This Unit represents the divisions and commissions of CDPHE responsible for protecting and improving the quality of our State's water resources. The Unit also represents the division of CDPHE charged with controlling radioactive materials. Specifically, the Unit provides legal counsel to the Executive Director's Office, the Radiation Management Program, the Water Quality Control Commission, the Water Quality Control Division, the Water and Wastewater Facility Operators Certification Board, the Office of Administration, the Office of Policy and Public/Private Initiatives, the Uranium, X-ray, Radioactive Materials, and Special Projects Units, and the Consumer Protection Division.

#### **Air Quality Unit**

This Unit represents the divisions and commissions of CDPHE responsible for improving and protecting our State's air quality. Specifically, the Unit provides legal counsel to the Executive Director's Office, the Air Quality Control Commission, and the Air Pollution Control Division. The Unit also represents the Colorado Energy Office.

#### **Hazardous & Solid Waste Unit**

This Unit represents the Hazardous Materials & Waste Management Division regarding the storage, treatment and disposal of solid and hazardous waste. The Unit ensures contaminated sites are promptly and thoroughly cleaned up by those responsible for the contamination, and pursues enforcement actions when appropriate. The Unit advises the Division on EPA-lead cases to ensure State input is incorporated into federal cleanup

actions. The Unit also provides legal advice to the Petroleum Storage Tank Committee, which oversees reimbursement of cleanup costs under the Petroleum Storage Tank Fund.

## **DNR Clients**

### **Water Conservation Unit**

The Unit assists Colorado Water Conservation Board (CWCB) to adopt and implement programs regarding instream flow protection, recreational in-channel diversions, flood management, water conservation and weather modification. The Unit helps draft contracts for CWCB's grant and loan program which provides funding for many purposes including water studies, conservation efforts, water rights purchases, reservoir construction, and dam rehabilitation. The Unit also acts to acquire and protect water rights on behalf of CWCB, Colorado Parks and Wildlife, the State Land Board, the Department of Transportation, and the Department of Corrections.

### **Water Resources Unit**

This Unit represents the Division of Water Resources (also known as the Office of the State Engineer) including the State Engineer, the seven Division Engineers, the Colorado Groundwater Commission, and the Board of Examiners for Water Well Contractors. The Unit represents its clients in administrative and court proceedings. Before the water courts, the Unit represents DWR in various water matters, including applications for new water rights, changes of water rights, plans for augmentation, objections to well permit issuances and denials, enforcement of curtailment and other administrative orders, appeals of agency decisions, the promulgation of agency rules, and other water rights related matters.

### **Resource Conservation Unit**

This Unit represents the Oil and Gas Conservation Commission, the Division of Reclamation, Mining and Safety, the Mined Land Reclamation Board, the Colorado Coal Mine Board of Examiners, the Colorado Inactive Mines Program, and the Mine Safety Unit. These clients implement and enforce numerous programs including regulation of reclamation of land that has been impacted by mining operations, regulation of oil and gas operations, and closure of inactive or abandoned mines. The attorneys help to ensure that the mining and oil and gas industry comply with all environmental protection and reclamation requirements.

### **State Trust Lands Unit**

This Unit primarily represents the State Board of Land Commissioners (also known as the Land Board). The Unit is responsible for all legal matters involving the Land Board, including advising on the management of real property (land, minerals, and water) throughout the state, and representing the Land Board in any legal or administrative proceedings. The Unit assists the Land Board in its trustee capacity as manager of eight trusts of land granted to the state by the federal government, the largest of which is the

school lands trust for the benefit of public K-12 education in Colorado. The Land Board manages the trusts under the constitutional and statutory provisions governing the trusts to generate revenue or other benefits for the purposes of the respective trusts. Given the Board's role to generate revenues, representation of the Land Board is similar in many respects to representation of a for profit corporate business entity and, as such, raises issues frequently not presented by other state agencies.

### **Parks and Wildlife Unit**

This Unit represents the Division of Parks and Wildlife and the Parks and Wildlife Commission on all legal matters, including advising on the management of the Division's significant real property and water rights holdings and assisting to implement its numerous regulatory programs (hunting, fishing, threatened and endangered species, recreational trails, vessels, snowmobiles, Off-Highway Vehicles, river guides). Parks and Wildlife generates its own revenues through the sale of hunting and fishing licenses, parks passes, and other permits and uses these funds to manage all wildlife and park and outdoor recreation resources.

## **II) PRIOR YEAR LEGISLATION**

### **Water Quality & Radiation Unit**

SB 14-192 amended the Radiation Control Act, C.R.S. §25-11-101 *et seq*, as it pertains to licensing and decontamination of uranium mills and uranium milling operations. The Unit was heavily involved with negotiating language with stakeholders and their attorneys. Implementing the bill will require regulatory changes and legal assistance from the Unit.

### **Air Quality Unit**

None.

### **Hazardous & Solid Waste Unit**

HB 14-1352 concerns the management of waste tires. This bill consolidated Colorado's waste tire laws in the solid waste statutes, consolidated regulatory and fee collecting authority in CDPHE and replaced the Waste Tire Processor and End User Fund with the End User Fund, which will pay people who find end uses for waste tires and tire-derived products, until the Fund sunsets in 3 years. The bill also changed the process for cleaning up illegal tire piles and established a process for CDPHE to recover money from parties responsible for creating waste tire piles that are remediated with State funds. Additionally, the bill refined existing CDPHE authorities governing waste tire and used tire management and processing. The bill required the Solid and Hazardous Waste Commission to promulgate implementing regulations.

### **Water Conservation Unit**

HB 14-1333 authorized \$138,079,000 in funding for various projects from the Construction Fund and Severance Tax Perpetual Base Fund, including \$87,769,000 for the Chatfield Reservoir Reallocation Project, a partnership with the U. S. Army Corps of Engineers (Corps) and local water providers to reallocate up to 20,600 acre-feet of existing flood storage to new water supply storage space in Chatfield Reservoir.

### **Water Resources Unit**

HB 14-1005 amends existing statutes to clarify that those water users whose headgates cannot obtain sufficient water because the stream has relocated or lowered may relocate their headgates upstream in order to obtain the full water supply to which they are entitled without filing an application with the water court for a change in point of diversion.

SB 14-026 removed certain statutory printing requirements for the Division of Water Resources, including the following requirements for: (1) the State Engineer to provide copies of his General Assembly annual reports to the governor and chairs of legislative committees dealing with agriculture and natural resources; (2) the Division Engineers to prepare biennial water right tabulations (now to be maintained and made available on the State Engineers' website); (3) the State Engineer to provide notice of agency decisions on applications for approval of substitute water supply plans and interruptible water supply agreements to water court parties via first-class mail (now by electronic e-mail unless a party has elected to receive service via first-class ).

SB 14-105 eliminated the requirement that a portion of certain statutory fees collected by the State Engineer for the Water Resources Cash Fund be transferred to the state's general fund.

### **Resource Conservation Unit**

HB 14-1356 authorizes an increase in the maximum daily penalty for violations of the Colorado Oil and Gas Conservation Act or Colorado Oil and Gas Commission ("COGCC") regulations. It increases the maximum daily penalty from \$1,000 to \$15,000 and removes the current maximum penalty cap of \$10,000 per violation. In addition to the monetary fine increases, HB-1356 authorizes the COGCC to impose other penalties on operators responsible for egregious violations, including restrictions on the issuance of new permits and suspension of existing permits. HB-1356 also creates a reporting requirement for COGCC to publish a quarterly report on the COGCC website listing certain information relating to any penalties assessed in the previous quarter.

SB 14-076 creates a new limited-impact permit for mining operations that affect 5 acres or less of surface area and subjects new applicants to the same permitting standards as the existing larger limited-impact permit category (less than 10 acres). The existing small limited-impact permit operations have until July 1, 2015, to comply with the new permit standards with regard to financial warranties and demonstrating the operator's right to

conduct mining operations. SB 076 also increases the annual fee for new small limited-impact permits for operations from \$86 to \$172.

SB 14-198 created a mineral extraction study group, comprised of members of the general assembly and the public, to research and study matters relating to the imposition and allocation of federal mineral leasing revenues.

### **State Trust Lands Unit**

HB 14-1210 requires state agencies that own forest land, rangeland, or wildland areas to enter into intergovernmental agreements with each county to address cooperation regarding the prevention of, the responses to and the payment of costs for fighting wildfires. Although originally exempt from the legislation, the State Land Board is now required to “evaluate the feasibility of entering into these agreements” by September 2014. It will have to report the feasibility findings to the Wildfire Matters Review Committee.

### **Parks and Wildlife Unit**

SB 14-188 appropriated \$1.5 million to fund a full-time attorney position to assist the state in preparing for and responding to a spate of upcoming listing decisions by the U.S. Fish and Wildlife Service under the federal Endangered Species Act for species native to and currently present in Colorado, including the lesser Prairie Chicken, the Gunnison Sage Grouse and the greater Sage Grouse.

## **III) HOT ISSUES**

### **Water Quality & Radiation Unit**

CORA: This past year the Unit spent substantial resources defending several Colorado Open Records Act lawsuits filed by a community group over CDPHE’s regulation of and closure plans for the Cotter Corporation’s Cañon City uranium milling facility. Although CDPHE prevailed on all of the issues and documents with one minor exception (out of hundreds of documents), the court awarded attorney fees to the community group. That award is on appeal to the Colorado Court of Appeals. In the meantime, the community group has filed another open records request that covers several hundred more documents.

Cotter Uranium Mill: After six months of lengthy and complicated negotiations, CDPHE, Cotter and EPA recently finalized an Administrative Order on Consent that will govern and guide the clean-up of the Cotter Cañon City Uranium Mill for several years to come.

Southern Delivery System: The Unit, on behalf of CDPHE, successfully defended CDPHE’s decision to approve the SDS project, a water supply project being built by the City of Colorado Springs. The Pueblo County DA and an environmental group

challenged the decision, and district court judge agreed with them. We successfully got the decision reversed by the Court of Appeals, and the Colorado Supreme Court declined to review that decision.

International Risk Group (IRG) is a company that redevelops contaminated properties. IRG recently sued CDPHE in Denver District Court over CDPHE's refusal to terminate IRG's water quality permit for the Bayaud facility on the South Platte River in Denver. Although IRG and CDPHE are discussing settlement, it is likely that the lawsuit will move forward, in part because of a third-party lawsuit against IRG over the same facility. That third-party lawsuit will also require a substantial amount of the Unit's and CDPHE's time.

### **Air Quality Unit**

Several significant matters will continue to demand attention by the Air Quality Unit. Conservation groups appealed select parts of Colorado's Regional Haze State Implementation Plan to the 10<sup>th</sup> Circuit Court of Appeals. The Air Quality Unit represents intervenor CDPHE. While parts of this appeal have been settled, the unit will defend the plan's provisions addressing Xcel Energy's Comanche Generating Station. The unit is also representing CDPHE in a joint civil enforcement action with the U.S. E.P.A. against Noble Energy for failing to adequately control volatile organic compound emissions from its exploration and production facilities, directly contributing ozone precursor pollutants in Colorado's only ground-level ozone nonattainment area.

The unit will be involved in rulemaking to address changes to Colorado's greenhouse gas regulations in the wake of the United States Supreme Court's decision partially striking down EPA's decision to regulate GHG's through its major source permitting program. The unit will be involved in substantial rulemaking to address EPA's initiative to regulate carbon dioxide from existing power plants. The unit is defending a conservation group's civil action to prompt faster action on pending major source permit applications and anticipates more such actions.

The Colorado Energy Office is becoming more actively engaged in targeted issues matters heard by the Public Utilities Commission, such as the implementation of the Renewable Energy Standards which will likely involve certain innovative approaches by power companies to achieve these standards.

### **Water Conservation Unit**

Governor Hickenlooper vetoed Senate Bill 14-023, which allowed "water efficiency savings" (water not consumed under existing practices and reduced as a result of structural improvements that increase water efficiencies) to be changed for instream use by the Colorado Water Conservation Board. The Governor voiced support for a targeted pilot program that would encourage conservation of water resources and keep more water in streams and rivers for water quality purposes. The CWCB recently voiced approval of

a proposed project that would allow a change of water for both instream flow and irrigation, noting such project would support the purposes behind the vetoed SB 14-023.

### **Water Resources Unit**

The Division of Water Resources believes that a water right's historical consumptive use may be subject to requantification in each successive case for a change of a water right to a new purpose and such requantification should include any years of diminished use or unexcused nonuse. Certain municipal water providers and private water suppliers disagree. These issues are the subject of two pending Supreme Court appeals.

The Division of Water Resources seeks to hold the oil and gas industry to the same water law principles and doctrines applicable to other water users, including (1) limiting new or changed appropriations to the amount of water for which the industry can show a legitimate and documentable need at lands or facilities in which the industry has a legal interest or a reasonable likelihood of obtaining such an interest, and (2) limiting previously decreed conditional oil and gas water rights to be changed to that amount of water originally contemplated for use and consumption at the time of the original appropriations.

### **Resource Conservation Unit**

Executive Order 2013-004 required the COGCC undertake a strategic review of its enforcement program, penalty structure, and imposition of fines to evaluate whether they strongly deter violations and encourage prompt and cooperative post-violation response and mitigation. COGCC policy response to the Order coupled with the increased penalties authorized by HB 14-1356 has resulted in an increase in enforcement related activities. Unit attorneys are involved in numerous aspects of the enforcement process, most notably the drafting of stipulated Agreement on Consent for the majority of new enforcement actions, a trend that will likely continue.

In addition, the COGCC has been inundated with Colorado Open Records Act (CORA) requests and Unit attorneys have spent a considerable amount of resources assisting the client with responses. The majority of CORA requests relate to hydraulic fracturing records, violation/penalty records, flood-related damages, and correspondence related to setback enforcement.

### **State Trust Lands Unit**

Rangeview Metropolitan District and Pure Cycle Corporation filed suit against the State Board of Land Commissioners claiming the Board gave them with the exclusive right to provide water service to all water users on the former Lowry Bombing Range. The plaintiffs base their case on contract theories of promissory estoppel and reformation of a water lease between the Board and Rangeview and claim \$128 million in damages. Trial was scheduled for three weeks in July 2014. The parties reached a negotiated settlement the weekend before the trial was scheduled to start. Under the settlement, the State Land Board was released from all damages and the parties made several concessions to each

other under the lease that the parties hope will make their relationship more productive and less contentious in the future. The settlement also allows the Land Board to realize the full benefits of its oil-and-gas lease with ConocoPhillips, which provides the Land Board with \$137 million in bonus payments plus royalties for actual production. The unit devoted substantial resources to negotiating and implementing a final resolution of a longstanding disagreement with SR Team, LLC involving a real estate development in Douglas County. As a result, the Land Board received a premium value of \$16 million for section school.

### **Parks and Wildlife Unit**

The Unit has spent substantial resources defending a lawsuit filed by a conservation group (“Rags over the Arkansas River” or “ROAR”) challenging the decision of the Parks and Wildlife Commission to authorize a temporary display of art known as the “Over The River” project by internationally known artists Christo and Jean-Claude. ROAR challenged the decision on a number of substantive and procedural grounds. The Denver District Court ruled for the PWC on all issues and the matter is currently before the Colorado Court of Appeals.

Colorado is home to three declining grouse species, the lesser Prairie Chicken, the greater Sage Grouse and the Gunnison Sage Grouse, all of which are recently listed or proposed for listing within the next by the U.S. Fish and Wildlife Service under the federal Endangered Species Act. Such listings can have significant impact to land use within the birds’ habitat within Colorado, as well as a negative impact on the state’s relationship with local governments, which at the state’s urging has spent significant resources to support conservation actions intended to protect the birds. The Governor’s Office, the Department of Natural Resources and Colorado Parks and Wildlife have all publicly stated that such listings, particularly any listing of the Gunnison Sage Grouse will be challenged by the state.

## **IV) WORKLOAD MEASURES**

### **Water Quality & Radiation Unit**

The attorneys in the Unit provide general legal advice as well as representation in regulatory, administrative, and judicial proceedings, enforcement actions, and legislative proposals. This includes representing clients in meetings, rulemaking hearings, and adjudicatory proceedings before the Water Quality Control Division, Water Quality Control Commission, the Water and Wastewater Facility Operators Certification Board, the Radiation Management Program, the Board of Health, and various state and federal courts. As just one example, the attorneys prepare for and attend approximately 15 – 20 meetings of various boards and commissions annually.

The attorneys assist the water quality division and radiation program in obtaining and maintaining delegation from the EPA and the U.S. Nuclear Regulatory Commission to administer the state counterparts of corresponding federal environmental and radiation programs. They ensure that adoption, implementation and enforcement of the state’s

environmental programs are consistent with state and federal requirements, and defend any challenges to such programs. The attorneys are regularly involved in issues of statewide importance, including such matters as clean streams, rivers and lakes, safe drinking water, the regulation of medical and industrial uses of radioactive materials, X-ray machines, clean-up of historic uranium mills, and licensing of new uranium mills.

The Unit's attorneys have a regular caseload of enforcement actions. The attorneys seek to ensure compliance with environmental programs through creative, non-punitive means, as well as through traditional enforcement methods. In addition to traditional cash penalties, the attorneys help to negotiate supplemental environmental projects, which can be used to reduce cash penalties and improve the environment, and environmental covenants to ensure protection of the public health and safety. In the regulatory arena, the attorneys help to draft and to negotiate clear, effective and efficient regulations and legislation on behalf of their clients. They review proposed legislation to ensure that it is consistent with existing laws and regulations.

In recent years the CDPHE has experienced an increase in workload related to many of the state's water quality and radiation control programs. Such workload increases have included and will include large-scale rulemakings such as basin-wide water quality standards and classifications regulations. They also include new temperature, organic chemicals, and arsenic standards, other permitting regulations, and water pollution issues from oil and gas operations. There has also been an increase in litigation concerning challenges to CDPHE decisions, such as with respect to water permits, radioactive materials licenses, Open Records Act issues, agency commission determinations, construction stormwater enforcement, water treatment plant site approvals, and drinking water disinfection revocations. This trend has required the Unit to spend additional time assisting the client to develop and defend its decision-making record. A recent increase in major federal environmental legislation, litigation, and policy initiatives will require additional legal resources as the client makes changes to its corresponding state program.

### **Air Quality Unit**

The attorneys in the Air Quality Unit provide general legal advice as well as representation in regulatory, administrative and judicial proceedings, enforcement actions, and legislative proposals. This includes representing clients in meetings, rulemaking hearings, and adjudicatory hearings before the Air Pollution Control Division, Air Quality Control Commission, the Public Utilities Commission, the Board of Health, and various state and federal courts. As just one example, the attorneys prepare for and attend approximately fifteen meetings of various boards and commissions annually.

Unit attorneys assist the Air Pollution Control Division and Air Quality Control Commission in obtaining and maintaining delegation from the EPA to administer the state counterpart of corresponding federal environmental program. They ensure that adoption, implementation and enforcement of the state's environmental programs are consistent with state and federal requirements, and defend any challenges to such programs. The attorneys are regularly involved in prominent issues of statewide importance, including such matters as compliance with national standards for ground level ozone and regional haze, greenhouse

gas regulation, and the management of pollution emissions associated with wildfires and controlled, open burning. Two unit attorneys also serve as counsel for the Colorado Energy Office, representing the office when it intervenes in cases before the Public Utilities Commission.

The Unit's attorneys have a regular caseload of enforcement actions. The attorneys seek to ensure compliance with environmental programs through creative, non-punitive means, as well as through traditional enforcement methods. In addition to traditional cash penalties, the attorneys help to negotiate supplemental environmental projects, which can be used to reduce cash penalties and improve the environment. In the regulatory arena, the attorneys help to draft and to negotiate clear, effective and efficient regulations and legislation on behalf of their clients. They review proposed legislation to ensure that it is consistent with existing laws and regulations.

The Air Pollution Control Division continues to experience significantly more work associated with rulemaking, permitting and enforcement due to an increase in oil and gas exploration and production as well as an increasingly educated regulated industry, requiring additional support from the Unit's attorneys. As the Division manages this workload, there is more demand on Air Quality attorneys to address a myriad of issues. The Air Quality Control Commission adopted significant rulemaking revisions for its oil and gas air emission controls program and anticipates more revisions to address Regional Haze plan adjustments as well as new and tighter federal standards for greenhouse gases, ozone, nitrogen oxides and sulfur dioxides. These complicated and contentious program changes demand significant resources from the Commission and the Division. Air Quality Unit attorneys will continue to see a demand for legal support on these program changes. In recent years, the Division and Commission have been involved in litigation over decisions approving the Regional Haze State Implementation Plan, permits, and Open Records Act issues. This trend has required the Unit attorneys to spend additional time advising the agencies and defending their decisions.

### **Hazardous & Solid Waste Unit**

This Unit represents the HMWMD in a wide variety of civil matters. The Unit's attorneys promptly review draft administrative orders to ensure that they are within the client's authority to issue and enforce. Additionally, the Unit represents the related rule-making body, the Solid & Hazardous Waste Commission, and ensures it complies with applicable statutory and regulatory procedural requirements, and advises the Commission as needed. The Unit also handles civil and administrative litigation and assists the client in formulating litigation strategy, amassing evidence, preparing witnesses, and appearing in administrative, trial and appellate courts. If facilities refuse inspection, attorneys obtain administrative search warrants, often within a few hours of the initial request. The attorneys help draft and negotiate clear, effective and efficient hazardous and solid waste regulations and legislation on behalf of their clients. Many Solid Waste Regulations are being completely revised and re-promulgated over the next several years. The attorneys review proposed legislation to ensure that it is consistent with existing laws and regulations. In addition, the client requests the attorneys provide trainings on a variety of

topics, including 4<sup>th</sup> amendment issues, CORA and open meetings laws, and general enforcement topics.

### **Water Conservation Unit**

The Unit assists the CWCB, and to a lesser extent, the Department of Transportation, the Department of Corrections, the State Historical Society and the Department of Education in acquiring, maintaining and protecting water rights. In order to meet expectations of that goal, the Unit: (1) evaluates water rights portfolios and recommends and assists in acting to protect the water; (2) identifies and resolves problems concerning existing water rights through stipulated settlements or litigation; (3) pursues changes of water rights or applications for new water rights as directed by the client; (4) protects clients' water rights and access easements; (5) represents and assists client agencies in administrative proceedings and hearings and advises staff in preparing for such meetings; (6) assists CWCB staff in developing and obtaining Controller approval of standard loan contract and revisions; (7) assists CWCB staff in resolving issues related to loans and grants and in developing loan programs and procedures; (8) provides comprehensive research for client agencies, including drafting legal memos and opinions; (9) advise CWCB regarding water and water rights acquisitions for instream flows and help assess the quality and viability of such prospective acquisitions, including negotiating specific terms of purchase.

### **Water Resources Unit**

Attorneys in the Water Resources Unit represent the State Engineer and his seven Division Engineers in water matters before Colorado's seven water courts. These matters may include: (1) opposition to applications for new water rights, changes of water rights, plans for augmentation, required findings of reasonable diligence in the development of conditional water rights, or to make conditional water rights absolute through actual use; (2) water right abandonment proceedings initiated by the Division Engineers; (3) the enforcement of water right administrative orders issued by the Division Engineers; (4) complaints for declaratory or injunctive relief regarding water rights or their administration; (5) appeals of the State Engineer's rulemakings; and (6) other State Administrative Procedures Act appeals of agency actions related to well-permitting, nontributary ground water determinations, temporary substitute water supply plans, interruptible water supply agreements, and other determinations delegated to the State Engineer by the General Assembly. Presently, the Unit is handling hundreds of water matters in varying stages of litigation.

Unit attorneys also represent and advise the Colorado Ground Water Commission and the State Engineer's staff in proceedings before the Commission at its quarterly meetings. The Ground Water Commission is a regulatory and adjudicatory body authorized by the General Assembly to manage and control ground water resources within eight Designated Ground Water Basins in eastern Colorado. These basins have very little surface water and users rely primarily on ground water as their source of supply. Matters before the Commission may include: (1) the determination of designated ground water basins or requests to de-designate all or a portion of designated basins; (2) the creation of ground

water management districts; (3) the creation and adoption of rules and policies; (4) reviews of requests for variances from such rules and policies; and (5) appeals of determinations the Commission has delegated to the State Engineer. Such determinations by the State Engineer include: (1) the issuance of new conditional large capacity well permits; (2) the determination of rights to ground water in the Denver Basin aquifers within the designated basins; (3) the issuance of replacement well permits for large capacity wells; (4) the determination of water rights or changes of water rights for large capacity wells; and (5) the issuance of final permits for such wells. The State Engineer and his staff also provide technical and administrative support to the Ground Water Commission and the Ground Water Management Districts.

Unit attorneys also represent the Board of Examiners of Water Well Construction and Pump Installation Contractors, which has general supervision and authority over the construction and abandonment of wells and the installation of pumping equipment, with the ability to adopt and revise related rules. The Board of Examiners also has the authority to examine for, deny, approve, revoke, suspend, and renew the licenses of applicants and disseminate information to pump installation contractors and well construction contractors in order to protect and preserve the ground water resources of the state. The Board handles complaints regarding licensed water well construction and pump installation contractors and those persons operating without a license. Unit attorneys assist the Board with hearings, the judicial enforcement of the Board's orders, and complaints against unlicensed contractors.

### **Resource Conservation Unit**

Attorneys in the Resource Conservation Unit represent the Division of Reclamation, Mining and Safety (DRMS) in administrative hearings held monthly before the Mined Land Reclamation Board. Attorneys advise and assist the Division in preparing for administrative hearings and represent the Division at prehearing conferences and at the hearings. In addition, the Unit represents Division staff related to administrative enforcement actions. These administrative enforcement hearings can range from small hearings with a few people involved to time consuming hearings in which numerous parties (operator, objectors, attorneys, etc.) and complex issues (water quality, uranium contamination, legal right to enter) are involved. In addition, attorneys represent the Division in all litigation and related appeals. The attorneys also assist the Division in drafting proposed regulations for rulemaking hearings, and will do so this year related to SB 14-076. Unit attorneys also provide day-to-day verbal and written advice and representation to the Division on a variety of legal issues and matters.

The DRMS continues to see a substantial increase in its workload related to gold, silver, molybdenum, and uranium prospecting and mining/development. Such mining and development will ultimately result in reclamation permit applications and/or amendments being filed with the Division and possible hearings being held on such applications before the Mined Land Reclamation Board. In addition, there have been a number of contested Coal matters involving complex issues and contentious parties. Finally, the Division has seen an increase in illegal mining violations that are resolved via stipulated

agreement or contested administrative hearings. Accordingly, there will be a parallel increased need for legal services.

Unit attorneys also act as legal advisor to the Colorado Oil and Gas Conservation Commission (COGCC) at monthly administrative hearings. The Unit represents COGCC staff on administrative enforcement actions and handles all litigation for this client. They formulate litigation strategy, amass evidence, prepare witnesses, and appear in administrative, trial and appellate courts. The Commission's attorney also assists in drafting proposed regulations for rulemaking hearings. The Commission has several large rulemaking hearings a year with multiple parties and numerous alternate proposals. The attorneys provide day-to-day verbal and written advice and representation to the Commission and staff on a variety of legal issues and matters. The attorneys work with the COGCC and its staff to set priorities for legal services based on workload, need, and budget constraints. The average yearly number of matters for which legal services are provided runs in the hundreds. This workload will dramatically increase as the COGCC increases its enforcement efforts in response Executive Order 2013-004. The trend of issuing record breaking numbers of applications for permits to drill will most likely continue this year.

Nearly two years ago the COGCC initiated litigation regarding the preemption of a local municipality's oil and gas regulations and is a party to a lawsuit challenging a voter-approved ban on the use of hydraulic fracturing. Both of these matters will continue to require significant attorney resources for the next year. In addition, the COGCC recently denied a petition for rulemaking which has been appealed to District Court. Based on the renewed concentration on enforcement matters, the litigation and the record breaking business of the COGCC, there is likely to be a continued increase in the Commission's need for legal services.

All client agencies represented by this Unit have seen an increase in litigation this past year, and that trend will likely continue. In recent years, appeals are becoming more common; therefore, the Unit expects a significant amount of appellate work.

### **Trust Lands Unit**

The attorneys in the State Trust Lands Unit are assigned to State Board of Land Commissioners. The attorneys act as general counsel to and work directly with the Land Board to appropriately plan and meet the demand for legal services based on workload and budget constraints. The case load for the Board continues to increase and generally exceeds legal service budgets even though attorneys worked directly with the Board to establish priorities within those budgets. Due to the specialized nature of the agency, which is primarily a revenue generating entity and not primarily regulatory in nature, legal services are provided by attorneys on a daily and otherwise on-going basis and not generally on an individual request basis. In many instances such services are provided informally in person or through telephone consultations. Assigned attorneys attend, represent and assist the Land Board to establish policy and program direction, and assess real estate transactions during its monthly meetings. Attorneys then assist Board staff to implement those policies, programs, and transactions as well as advise on the general

management of the revenue generating assets of the Board. The provision of legal services is given in a manner intended to avoid legal challenge to or litigation regarding the activities of the Board. Any litigation that is filed is handled by the attorney assigned to represent the Land Board in a timely and effective manner.

### **Parks and Wildlife Unit**

The attorneys in the Parks and Wildlife Unit act as general counsel to and work directly with its client agency, the Colorado Parks and Wildlife Commission and the Division of Parks and Wildlife (collectively “Colorado Parks and Wildlife”), to appropriately plan and meet the demand for legal services based on workload and budget constraints. The case load for the client agency continues to increase and generally exceeds the legal service budget and attorneys work directly with staff from the client agencies to establish priorities within the budget.

Due to the specialized nature of Colorado Parks and Wildlife, which is primarily a self-funded resource management entity and not solely regulatory in nature, legal services are provided by attorneys on a daily and otherwise on-going basis and not generally on an individual request basis. The operation of Colorado Parks and Wildlife is in many instances comparable to a “for profit” corporation. In many instances such services are provided informally in person or through telephone consultations on a daily basis. Assigned attorneys attend, represent and assist the Parks and Wildlife Commission to establish policies and program direction during its monthly meetings and then assist the Division of Parks and Wildlife in the ongoing implementation of those policies and programs. Attorneys also assist with legal issues regarding the general management of the revenue generating assets of Colorado Parks and Wildlife.

The provision of legal services is given in a manner intended to prevent or avoid legal challenge to or litigation regarding the activities of Colorado Parks and Wildlife. However, any litigation filed is handled by the attorney assigned to represent the client agency and performed in a timely and effective manner.

## **I) BACKGROUND INFORMATION: OFFICE OF CONSUMER COUNSEL SECTION.**

This Unit provides full legal services to the Office of Consumer Counsel (“OCC”), a type 1 agency within the Colorado Department of Regulatory Agencies, and the Utility Consumers’ Board. By statute, the OCC is charged with representing the public interest and specific interests of residential, small business, and agricultural consumers in proceedings before the Colorado Public Utilities Commission (“Commission”). Such advocacy most often involves matters relating to proposed changes in electric, gas, and telephone utility rates and services. In addition, the Unit represents the OCC in federal regulatory proceedings affecting Colorado consumers’ rates and services. See Legal Services to State Agencies for Program Summary.

## **II) PRIOR YEARS LEGISLATION**

In 2014 the Colorado Legislature passed several telecommunication bills (HBs14-1327, 1328, 1329, 1330 and 1331) that will affect the consumers represented by the OCC. As a result of the passage of these bills, the Commission will be initiating several proceedings to implement the legislation. The OCC will be participating in these proceedings.

## **III) HOT ISSUES (for the OCC)**

Governor Ritter’s issuance in November 2007 of his Colorado Climate Action Plan and the Legislature’s passage of HB10-1365, known as the “Clean Air-Clean Jobs Act” (“CACJA”), has greatly affected energy regulation in Colorado. As a result of the Governor’s Climate Action Plan, the CACJA, and the Commission’s rulemaking dockets to implement this legislation, the OCC has been heavily involved in numerous proceedings before the Commission involving energy issues.

The Commission requires jurisdictional electric utilities, Public Service Company of Colorado (“Public Service”) and Black Hills/Electric (“Black Hills”) to file every four years their electric resource plan (“ERP”) to determine cost-effective resource portfolios to meet their electric resource needs. Public Service filed their latest ERP in October 2011 and Black Hills filed their latest ERP in July 2012. These ERP filings were affected by the PUC’s decisions in other dockets, which included the CACJA, Demand Side Management, Renewable Energy Resources, Interruptible Service Option Plan and various transmission plan applications. HB07-1037 required the Commission to develop rules for natural gas and electric demand side management programs to develop natural gas and electric savings targets. Electric resource needs will be reduced by the implementation of these conservation measures. HB07-1281 revised the electric resource standards by requiring electricity to be generated, for utilities under the Commission’s jurisdiction, from eligible energy resources in the following amounts: 3% for the year 2007, 5% for the years 2008

through 2010, 10% for the years 2011 through 2014, 15% for the years 2015 through 2019 and 20% for the year 2020 and thereafter. (Municipal utilities and cooperative electric associations have smaller requirements.) The maximum retail rate impact to comply with these standards is 2% of the total electric bill annually for each customer. HB06-1281 (codified at 40-2-123) provides incentives for utilities to consider the use of “new clean energy and energy-efficient technologies” for its electric generation portfolio. For generation that qualifies as a 123 Resource, the utility is allowed to collect approved costs through a separate rate rider. SB09-051 encourages the installation of energy-efficient equipment such as solar panels. HB10-1001 further revised the electric resource standards by requiring electricity from eligible energy resources to 12% for the years 2011 through 2014, 20% for the years 2015 through 2019 and 30% for the year 2020 and thereafter. The 2011 and 2012 ERP proceedings involved all of the above referenced legislation. Both Public Service and Black Hills are currently implementing the Commission’s ERP decisions.

The CACJA required Public Service and Black Hills to file at the Commission before August 15, 2010 its Emission Reduction Plan, which covered a minimum of 900 megawatts or 50% of the utility’s coal-fired electric generating units in Colorado, whichever was smaller. Each of the utility’s plans had to be reviewed by the Department of Public Health and Environment prior to filing to determine if the plan or plans “meet the current and reasonably foreseeable requirements of the Federal Act (“Federal Clean Air Act”) and State law (“Colorado Air Pollution Prevention and Control Act”) in a cost-effective manner.” Filings were made by Public Service and Black Hills. Pursuant to HB10-1365 the Commission issued its Decision in both proceedings on December 15, 2010. The CACJA requires full implementation of the approved Emission Reduction Plans on or before December 31, 2017. As indicated above, the CACJA affects the ERP filings made by Public Service and Black Hills. In addition to affecting the ERP filings, the implementation of the CACJA will affect the electric rates paid by the customers of the two utilities. Black Hills filed its electric rate case on April 30, 2014 and Public Service filed its electric rate case on June 17, 2014. Both of these proceedings involve rate issues as a result of the CACJA. The OCC is representing its statutorily required customers in these electric rate cases.

The OCC also represents its statutorily required customers in natural gas rate cases that are filed by five investor owned natural gas companies. Public Service filed a natural gas rate case in December 2012, which was finalized by the Commission in February 2014. Atmos Energy filed a natural gas rate case on April 2, 2014. As a result of new federal legislation, investor owned natural gas companies have to implement updated natural gas safety procedures. As a result, the natural gas companies have proposed adjustments to allow recovery of these costs outside of a normal rate case. Rocky Mountain filed on March 31, 2014 for a System Safety Integrity Rider.

#### **IV) WORKLOAD MEASURE (for the OCC)**

Workload Measure	FY 13 Actual	FY 14 Actual	FY 15 Actual	FY 16 Estimate	FY 17 Request
Achieve customer savings that at least equal the OCC's annual appropriation	3284% \$50,202,608	3548% \$58,962,546		3416% \$54,582,000 (Based on a 2 year fiscal average)	3416% \$54,582,000 (Based on a 2 year fiscal average)
Percent of rate proceedings in which the OCC participated on behalf of consumers	100%	100%	100%	100%	100%

#### **OCC**

Performance Measure	Outcome	FY 13 Actual		FY 14 Actual		FY 15 Estimate		FY 16 Request	
		<u>Incidents</u>	<u>Change</u>	<u>Incidents</u>	<u>Change</u>	<u>Incidents</u>	<u>Change</u>	<u>Incidents</u>	<u>Change</u>
Number of cases OCC participates	Benchmark	60		60		60		60	
	Actual	80		79					

*Strategy:* The Office of Consumer Counsel ("OCC") unit represents the Office of Consumer Counsel and therefore represents residential, small commercial and agricultural customers before the Public Utilities Commission.

*Evaluation of Prior Year Performance:* Because the cases the OCC unit participates is based on the filings done by electric, natural gas and telephone utilities, the OCC has no control on the number of cases worked on. However, by reviewing the savings chart above, the OCC has saved utility customers millions of dollars.

*Key Workload Indicators:* The key workload factor is the amount of customer savings. The number can fluctuate each year because it depends on the number and type of cases filed by utilities. For example, there are potentially more savings in years that a utility or multiple utilities file rate cases.

*Performance Evaluation:* The OCC has saved utility customers millions of dollars each year since the OCC was created by the Legislature in 1984. The savings chart above shows the customer savings for the past two fiscal years. The OCC can maintain this success by diligently advocating for utility customers in proceedings before the Commission.



## SCHEDULE 2 - PROGRAM SUMMARY

### Department of Law

### LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 13		Actual FY 14		Approp FY 15		Estimate FY 15		Request FY 16	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
<b>PERSONAL SERVICES</b>	21,987,642	225.1	25,995,352	228.5	26,122,010	254.0	29,856,265	254.0	26,529,258	253.3
General Fund	321,583		-		-		-		-	
General Fund Exempt	-		-		-		-		-	
Cash Fund	839,619		-		24,592		24,592		-	
Reappropriated Funds	20,826,440		25,995,352		26,097,418		29,831,673		26,529,258	
<b>OPERATING EXPENSES</b>	1,990,531		3,221,021		-		1,840,928		1,826,768	
General Fund	81,435		-		-		-		-	
General Fund Exempt	-		-		-		-		-	
Cash Fund	-		-		-		2,732		-	
Reappropriated Funds	1,909,096		3,221,021		-		1,838,196		1,826,768	
<b>INDIRECT COST ASSESSMENT</b>	2,950,911		3,264,492		3,211,050		3,211,050		3,024,158	
General Fund	-		-		-		-		-	
Cash Fund	-		1,186,099		848,945		848,945		1,186,099	
Reappropriated Funds	2,950,911		2,078,393		2,362,105		2,362,105		1,838,059	
<b>GRAND TOTAL</b>	26,929,084	225.1	32,480,865	228.5	31,173,988	254.0	34,908,243	254.0	31,380,185	253.3
General Fund	403,018		-		-		0		-	
General Fund Exempt	-		-		-		0		-	
Cash Funds	839,619		1,186,099		876,269		876,269		1,186,099	
Reappropriated Funds	25,686,447		31,294,765		30,297,719		34,031,974		30,194,086	
Federal Funds	-		-		-		0		-	



### SCHEDULE 3 - PERSONAL SERVICES PROGRAM DETAIL

#### Department of Law

#### LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 12		Actual FY 14		Approp FY 15		Estimate FY 15		Request FY 16	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
<b>I. POSITION DETAIL</b>										
Deputy Attorney General	622,411	5.0	714,188	5.0			731,640	5.0	731,640	5.0
Assistant Deputy Attorney General	67,764	0.5								
First Assistant Attorney General	2,868,813	28.2	3,603,718	29.3			3,730,752	30.0	3,730,752	30.0
Senior Assistant Attorney General	3,322,855	36.8	4,010,835	37.4			4,652,017	43.0	4,652,017	43.0
Assistant Attorney General	7,137,346	97.4	8,310,666	101.3			9,432,749	113.6	9,375,097	112.9
Assistant Attorney General II										
Assistant Attorney General I										
Attorney I										
General Professional IV										
Legal Assistant II	1,797,205	30.6	1,931,532	30.3			2,315,838	34.0	2,315,838	34.0
Legal Assistant I	49,274	1.1	56,784	1.2			51,444	1.0	51,444	1.0
Program Assistant I										
Office Manager I	265,768	5.0	272,207	4.9			292,572	5.0	292,572	5.0
General Professional V	37,762	0.4	38,515	0.4			40,109	0.4	40,109	0.4
General Professional IV										
IT Tech II										
Administrative Assistant I										
Administrative Assistant III	198,979	5.1	175,172	4.2			299,334	7.0	299,334	7.0
Administrative Assistant II	541,508	15.0	545,832	14.5			575,220	15.0	575,220	15.0
<b>TOTAL POSITION DETAIL</b>	16,909,684	225.1	19,659,450	228.5			22,121,674	254.0	22,064,022	253.3



## SCHEDULE 3 - PROGRAM DETAIL

### Department of Law

### LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 13		Actual FY 14		Approp FY 15		Estimate FY 15		Request FY 16	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
<b>(I.A) CONTINUATION FTE SALARY COSTS</b>	16,909,684	225.1	19,659,450	228.5			22,121,674	254.0	22,064,022	253.3
(Permanent FTE by position) Continuation Salary Subtotal										
<b>(I.B) OTHER PERSONAL SERVICES</b>										
PERA on Continuation Subtotal	1,687,885		1,967,183				2,245,350		2,239,498	
Medicare on Continuation Subtotal	237,826		278,622				320,764		319,928	
Non-Base Building Performance Awards			8,072				27,008			
Part-Time/Temporary Salaries	242,714		357,459				449,675		449,675	
Contractual Services	150,419		442,637				512,340		512,340	
Overtime Pay	-		4,899				7,239		7,239	
Termination/Retirement Payouts	65,704		66,598							
Sick Leave Payouts	124,019		14,017							
Unemployment Compensation	17,723		12,312							
OT TO JUD	-		33,226				34,500		34,500	
Reduced Appropriation Need	-		-				540,697		853,556	
Other Employee Benefits	37,321		47,836				48,500		48,500	
<b>Subtotal -</b>	19,473,298	225.1	22,892,312	228.5			26,307,747	254.0	26,529,258	253.3
<b>(I.C.) PERSONAL SERVICES SUBTOTAL= A+B</b>										
<b>(I.D.) POTS EXPENDITURES</b>										
Health/Life/Dental	1,496,619		1,737,040				1,785,420			
Salary Survey			3,131,230							
Performance Awards			328,886							
Short Term Disability	28,925		36,893				48,668			
SB 04.257 A.E.D.	531,852		698,387				884,867			
SB 06.235 S.A.E.D.	456,949		630,720				829,563			
Other: [ ] Indicates a Non-add										
	21,987,642	225.1	25,995,352	228.5			29,856,265	254.0	26,529,258	253.3
<b>(I.E.) BASE PERSONAL SERVICES= C+D</b>										
General Fund										
General Fund Exempt										
Cash Funds	839,619		-				24,592			
Reappropriated Funds	21,148,023		25,995,352				29,831,673		26,529,258	
<b>(I.F.) DIFFERENCE= II-I.E.</b>										

## SCHEDULE 3 - PROGRAM DETAIL

### Department of Law

### LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 13		Actual FY 14		Approp FY 15		Estimate FY 15		Request FY 16	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
<b>(I.G.) REQUEST YEAR DECISION ITEMS</b>										
General Fund										
Cash Funds										
Reappropriated Funds										
<b>Dec Item #</b>										
General Fund										
Cash Funds										
Reappropriated Funds										
<b>NP Decision Item:</b>										
Reappropriated Fund									-	-
<b>ROLLFORWARDS</b>	-		-				-			
General Fund Exempt	-		-				-			
Reappropriated Funds	-		-				-			
<b>Projected Spending Authority Shortfall</b>							-			
Reappropriated Funds							-			
<b>PERSONAL SERVICES TOTAL</b>	21,987,642	225.1	25,995,352	228.5			29,856,265	254.0	26,529,258	253.3
General Fund	321,583		-							
General Fund Exempt	-		-				-			
Cash Funds	839,619		-				24,592		-	
Reappropriated Funds	20,826,440		25,995,352				29,831,673		26,529,258	
Federal Funds										
<b>II. PERSONAL SERVICES REQUEST (AGGREGATE ADJUSTMENTS TO THE BASE APPROPRIATION)</b>										
Previous Year Long Bill and Special Bills									25,645,486	251.0
DNR: Legal Hours Decision Item									-	0.0
									-	0.0
Adjustments:										0.0
Salary Survey-Classified									89,114	
Merit Pay Classified									28,215	
Salary Survey Exempt									246,427	
Merit Pay Exempt									180,925	

## SCHEDULE 3 - PROGRAM DETAIL

### Department of Law

### LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 13		Actual FY 14		Approp FY 15		Estimate FY 15		Request FY 16	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
Non Base Building Merit									(10,001)	
FY 14 Special Bills									476,524	3.0
Subtotal -									26,656,690	254.0
<b>PERSONAL SERVICES RECONCILIATION</b>										
Long Bill Appropriation	20,510,299	237.9	21,168,224	241.5	25,645,486	251	25,645,486	251.0		
Supplemental SB 13-94	373,385	3.5								
Supplemental HB 14-1240		0.0	884,500	6.0						
DU Grant for Fellowship			20,000							
Special Bills -										
HB 12-1303 Certification of Speech Lang Patholog	14990	0.1								
HB 12-1330 Hearing Process Wildlife	2725									
HB 12-1300 Sunset Continue Prof Review Commi	2044	0								
HB 12-1311 Sunset Continue Pharmacy Board	20783	0.2								
HB 12-1110 Appraisal Mgt Companies	56555	0.5								
SB 13-014 Immunity for Emerg Drugs to Overdose Victims			2,086							
SB 13- 26 Medical Transparency			6,953							
SB 13-39 Regulation of Audiologists			10,165							
SB 13-83 Prescribed Burning Program			4,172							
SB 13-151 Massage Therapists			19,120							
SB 13- 162 Sunset - Bd of Plumbers			5,215							
SB 13-172 Sunset - Accupuncture Regulation			4,519							
SB 13-180 Sunset Occupational Therapy			11,471							
SB 13-200 Expand Medicaid Eligibility			22,419							
SB 13-207 Perform Auricular Acudetox by MH Prof			5,562							
SB 13-219 Meth Lab Remediation			13,905	0.1						
SB 13-221 Cons Easement Tax Credit Cert App			62,573	0.5						
SB 13-238 Regulation Hearing Aid Providers/Sellers			5,215							
SB 13-241 Industrial Hemp			12,515	0						
SB 13-251 CDL and Identity Documentation			6,953	0.1						
HB 13-1111 Regulation of Naturopathic Doctors			15,296							
HB 13-1292 Keep Jobs in Colorado Act			41,715	0.3						
HB 13-1317 Implement Amend 64: Majority Rec.			63,616	0.5						
SB 14-188 Species Conservation Trust Fund Project List					\$147,550	1.0	\$147,550	1.0		
SB 14-172 Work Event					\$182		\$182			
SB 14-133 Regulation of Private Investigators					\$8,151		\$8,151			
SB 14-125 Regulation of Transport Network Companies					\$8,197	0.1	\$8,197	0.1	32,789	0.3
SB 14-099 Provisional Physical Therapist Licenses					\$16,394	0.1	\$16,394	0.1	(5,738)	
SB 14-029 Paint Stewardship Program					\$8,197		\$8,197			
SB 14-005 Alternative Administrative Remedies-Wage Claims					\$20,903	0.1	\$20,903	0.1	20,903	0.1
HB 14-1398 Authorize Marijuana Financial Service Coops					\$13,116	0.1	\$13,116	0.1	3,279	
HB 14-1380 Colorado Coroners Standards and Training					\$3,279		\$3,279		-	

## SCHEDULE 3 - PROGRAM DETAIL

### Department of Law

### LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 13		Actual FY 14		Approp FY 15		Estimate FY 15		Request FY 16	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
HB 14-1331 Regulation of Basic Local Exchange Services					\$95,088	0.6	\$95,088	0.6	(95,088)	(0.6)
HB 14-1329 Deregulate Internet Protocol Emerging Tech					\$16,394	0.1	\$16,394	0.1	(16,394)	(0.1)
HB 14-1328 Connect CO Broadband Act					\$50,167	0.4	\$50,167	0.4	(24,592)	(0.2)
HB 14-1319 Outcomes Based Funding Model for Higher Ed					\$16,394	0.1	\$16,394	0.1	(16,394)	(0.1)
HB 14-1227 Sunset Review of State Dental Board					\$51,233	0.3	\$51,233	0.3	(8,197)	
HB 14-1202 Concerning Study of Accountability Requirement					\$18,000	0.1	\$18,000	0.1	(18,000)	(0.1)
HB 14-1199 Change to the Regulation of Consumer Goods					\$3,279		\$3,279			
Year End Transfers										
Overexpenditures (Reversions)										
Lapsed Appropriation Cash Funds										
Lapsed Appropriation Cash Funds Exempt										
Lapsed Appropriation Reappropriated Funds	(1,787,008)	(17.1)	(2,944,123)	(20.5)						
Other										
<b>Allocated POTS</b>										
Salary POTS	-		-				-			
Health/Life/Dental	1,709,984		1,643,905				1,567,540			
Short Term Disability	29,063		36,962				44,343			
SB 04.257 A.E.D.	590,208		744,199				814,292			
SB 06.235 S.A.E.D.	464,614		668,099				763,398			
Salary Survey Classified	-		153,961				89,114			
Salary Survey Exempt	-		2,977,269				246,427			
Merit Pay Classified			56,153				28,215			
Merit Pay Exempt			272,733				180,925			
<b>Pots Subtotal</b>	2,793,869		6,553,281				3,734,254			
<b>Reconciled Total</b>	21,987,642	225.1	25,995,352	228.5			29,856,264	254.0	26,529,258	253.3
<b>II. PERSONAL SERVICES REQUEST TOTAL</b>	21,987,642	225.1	25,995,352	228.5	26,122,010	254.0	29,856,265	254.0	26,529,258	253.3
General Fund	321,583		-		-		-			
General Fund Exempt	-		-		-		-			
Cash Funds	839,619		-		24,592		24,592		-	
Reappropriated Funds	20,826,440		25,995,352		26,097,418		29,831,673		26,529,258	
Federal Funds	-		-		-					

### SCHEDULE 3 - OPERATING PROGRAM DETAIL

#### Department of Law

#### LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 13		Actual FY 14		Approp FY 15		Estimate FY 15		Request FY 16	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
<b>OPERATING EXPENSES</b>										
1930 Purchased Services - Litigation	91,992		102,726				587,940		573,593	
2170 Waste Disposal Services	6,007		2,043				6,000		6,000	
2210 Other Maintenance	3,844		-							
2220 Building Grounds Maintenance	-		8,971				-		-	
2230 Equipment Contract Maintenance	2,043		220				2,225		2,225	
2231 ADP Equip Maint/Repair Services	131,733		43,066				79,852		79,852	
2232 Software Upgrades	97,265		74,510				185,026		205,150	
2240 Motor Vehicle Repair/Maintenance	1,141		-						-	
2251 Rental/Lease Motor Pool Veh	18,874		18,820							
2252 Leased Vehicle - Variable	17,131		22,789				22,520		22,520	
2253 Rental of Equipment	6,390		-				5,240		5,240	
2254 Rental of Motor Vehicles	89		192						-	
2255 Rental of Building	748,359		21,511						-	
2258 Parking	6,600		14,388				6,600		6,600	
2259 Parking Fee Reimbursement	59		61				-		-	
2268 Rental of IT Software - Network	28,980		30,348				15,678		15,678	
2510 In State Travel	238		770				1,000		1,000	
2511 IS Common Carrier Fares	2,231		2,625				1,584		1,584	
2512 IS Personal Travel Per Diem	8,454		10,062				7,853		7,853	
2513 IS Pers Vehicle Reimbursement	717		728				715		715	
2514 IS State Owned Aircraft	-		-						-	
2515 State-Owned Vehicle Charge	-		-						-	
2520 IS Travel Non Employee	39		-						-	
2521 IS Common Carrier Non Employee	196		-						-	
2522 IS Non Employee Per Diem	-		-						-	
2523 IS Non Employee Per Veh Reimburse	-		-						-	
2530 Out of State Travel	869		542				650		650	
2531 OS Common Carrier Fares	3,509		3,276				4,312		4,312	
2532 OS Personal Travel Per Diem	2,937		4,264				4,200		4,200	
2533 OS Pers Vehicle Reimbursement	0		-						-	
2541 OS/Non-Empl Common Carrier	0		-						-	
2550 Out of Country Travel	0		-						-	
2552 OC Per Diem	0		-						-	
2610 Advertising	0		-						-	
2611 Public Relations	0		-						-	
2630 Comm Service Div of Telecom	68,280		375				81,088		81,088	
2631 Comm Svcs from Outside Sources	21,143		6,430				14,895		14,895	
2640 GGCC Billing Purch Services	0		-						-	
2641 Other ADP Billing	13,853		72,915				287,255		287,255	
2650 OIT Purchased Svs	-		-						-	
2660 Insurance	41,808		41,259							
2680 Contract Printing	46,201		18,820				52,852		52,852	
2681 Photocopy Reimbursement	60		82						-	

### SCHEDULE 3 - OPERATING PROGRAM DETAIL

#### Department of Law

#### LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 13		Actual FY 14		Approp FY 15		Estimate FY 15		Request FY 16	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
2810 Freight & Storage	0		-						-	
2820 Other Purchased Services	4,626		20,442				25,316		25,316	
2830 Office Moving-Pur Services	6,600		192				-		-	
2831 Storage-Purchase Services	810		-						-	
3110 Other Supplies and Materials	-		57						-	
3112 Automotive Supplies	-		24						-	
3113 Clothing and Uniform Allowance	-		-						-	
3114 Custodial	-		-						-	
3115 DP Supplies	963		391				29,850		28,150	
3116 Purchased/Leased Software	90,585		140,596				90,585		90,585	
3117 Educational	59		723				100		100	
3118 Food and Food Service Supplies	-		-						-	
3120 Books & Subscriptions	49,289		43,098				55,452		55,452	
3121 Office Supplies	50,081		53,705				45,245		43,848	
3122 Microfilming/Photo. Supplies	-		-						-	
3123 Postage	25,679		25,212				28,526		28,526	
3124 Printing	966		439				1,247		1,247	
3126 Repair & Maintenance Supplies	95		66						-	
3128 Non-Capitalized Equipment	2,264		7,525				16,450		16,450	
3131 Non-Capitalized Building Materials	5,382		3,234				4,500		4,500	
3132 Non Capitalized IT Purchases	1,781		31,000						-	
3139 Non - Capitalized Fixed Asset Other	-		4,240						-	
3140 Non-Capitalized IT - PC's	32,166		37,358						-	
3141 Non-Capitalized IT- Servers	-		3,859						-	
3142 Noncapitalized IT Network	712		2,392						-	
3143 Non-Capitalized IT Other	32,703		75,010						-	
3146 Non-Cap. IT Purch. Server Software	-		-						-	
3940 Electricity	-		-						-	
3950 Gasoline	-		-						-	
3970 Natural Gas	-		-						-	
4110 Losses	-		-						-	
4111 Prizes and Awards	950		-						-	
4117 Reportable Claims Against the State	-		-						-	
4140 Dues & Memberships	1,159		39,634				73,550		73,550	
4150 Interest Expense			5,612						-	
4151 Interest - Late Payments	282		-						-	
4170 Miscellaneous Fees	-		148						-	
4180 Official Functions	2,369		927				7,260		7,260	
4220 Registration Fees	49,898		87,073				78,522		78,522	
4221 Other Educational - W2 RPT	-		-						-	
5993 Refunds	35		-						-	
6140 Leasehold Improv - Direct Purch	-		-						-	
6210 ADP Equipment	-		-						-	
6212 IT Servers - Direct Purchase	88,982		34,708						-	

### SCHEDULE 3 - OPERATING PROGRAM DETAIL

#### Department of Law

#### LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 13		Actual FY 14		Approp FY 15		Estimate FY 15		Request FY 16	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
6213 IT PC SW Direct Purchase	73,590		-							
6214 IT Other Direct Purchase	-		-						-	
6215 IT Network Direct Purchase	-		-							
6220 Office Furn & Equip	-		-				16,840			
6222 Office Furn Direct Purchase	-		397,851							
6224 Other Furn & Fixtures- Direct Purch.	89		-						-	
6480 Other Cap. Equipment-Lease Furn	-		-						-	
6340 Leasehold Improvements	-		-						-	
EBJJ OT RE LAW to JUD	97,378		1,703,714							
<b>OPERATING EXPENSE SUBTOTAL</b>	1,990,531		3,221,021				1,840,928		1,826,768	
General Fund										
General Fund Exempt										
Cash Funds	-		-							
Reappropriated Funds	1,990,531		3,221,021				1,840,928		1,826,768	
<b>DECISION ITEMS:</b>										
TF									-	
General Fund										
Cash Funds										
Reappropriated									-	
<b>DECISION ITEMS:</b>										
TF										
Reappropriated										
<b>DECISION ITEMS:</b>										
TF									-	
RF									-	
<b>ROLLFORWARDS</b>							-			
General Funds Exempt							-			
Reappropriated Funds							-			
<b>Subtotal:</b>	-		-		-		-		-	
Reappropriated Funds	-		-		-		-		-	
<b>OPERATING EXPENSE TOTAL:</b>	1,990,531		3,221,021		-		1,840,928		1,826,768	
General Fund	81,435		-				-		-	
General Fund Exempt							-		-	
Cash Funds	-		-				-		-	
Reappropriated Funds	1,909,096		3,221,021		-		1,840,928		1,826,768	

### SCHEDULE 3 - OPERATING PROGRAM DETAIL

#### Department of Law

#### LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 13		Actual FY 14		Approp FY 15		Estimate FY 15		Request FY 16	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
<b>Operating Expense Reconciliation</b>										
Long Bill Appropriation	1,670,720		1,696,667		1,788,002		1,788,002		1,840,928	
Supplemental SB 13-94	41,487		-							
Supplemental HB 14-1240			98,277						-	
Special Bills -										
HB 12-1303 Certification of Speech La	1,666									
HB 12-1330 Hearing Process Wildlife	303									
HB 12-1300 Sunset Continue Prof Rev	227									
HB 12-1311 Sunset Continue Pharmac	2,309									
HB 12-1110 Appraisal Mgt Companies	6,284									
SB 13-014 Immunity for Emerg Drugs to Overdose Victims			232							
SB 13- 26 Medical Transparency			772							
SB 13-39 Regulation of Audiologists			1,129							
SB 13-83 Prescribed Burning Program			463							
SB 13-151 Massage Therapists			2,124							
SB 13- 162 Sunset - Bd of Plumbers			579							
SB 13-172 Sunset - Accupuncture Regulation			502							
SB 13-180 Sunset Occupational Therapy			1,275							
SB 13-200 Expand Medicaid Eligibility			2,491							
SB 13-207 Perform Auricular Acudetox by MH Prof			618							
SB 13-219 Meth Lab Remediation			1,545							
SB 13-221 Cons Easement Tax Credit Cert App			6,952							
SB 13-238 Regulation Hearing Aid Providers/Sellers			579							
SB 13-241 Industrial Hemp			1,390							
SB 13-251 CDL and Identity Documentation			772							
HB 13-1111 Regulation of Naturopathic Doctors			1,699							
HB 13-1292 Keep Jobs in Colorado Act			4,635							
HB 13-1317 Implement Amend 64: Majority Rec.			7,068							
SB 14-188 Species Conservation Trust Fund Project List					16,394		\$16,394			
SB 14-133 Regulation of Private Investigators					906		\$906			
SB 14-125 Regulation of Transport Network Companies					911		\$911		3,643	
SB 14-099 Provisional Physical Therapist Licenses					1822		\$1,822		(638)	
SB 14-029 Paint Stewardship Program					911		\$911			
SB 14-005 Alternative Administrative Remedies-Wage Claims					2322		\$2,322		2,323	
HB 14-1398 Authorize Marijuana Financial Service Coops					1457		\$1,457		364	
HB 14-1380 Colorado Coroners Standards and Training					364		\$364			
HB 14-1331 Regulation of Basic Local Exchange Services					10565		\$10,565		(10,565)	
HB 14-1329 Deregulate Internet Protocol Emerging Tech					1822		\$1,822		(1,822)	
HB 14-1328 Connect CO Broadband Act					5574		\$5,574		(2,732)	
HB 14-1319 Outcomes Based Funding Model for HE					1822		\$1,822		(1,822)	
HB 14-1227 Sunset Review of State Dental Board					5692		\$5,692		(911)	

### SCHEDULE 3 - OPERATING PROGRAM DETAIL

#### Department of Law

#### LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 13		Actual FY 14		Approp FY 15		Estimate FY 15		Request FY 16	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
HB 14-1202 Concerning Study of Accountability Requirement					2000		\$2,000		(2,000)	
HB 14-1199 Change to the Regulation of Consumer Goods					364		\$364			
<b>Allocated POTS:</b>										
Vehicle Lease Payments	21,625		16,809							
Capital Complex Lease Space/CARR B	807,929		1,635,110							
Lease Space	19,985		19,985							
Worker's Compensation	42,307		41,636							
IT Asset Maintenance	348,280		348,280							
Building Security	81,136									
Postage Increase										
ADP Capital Outlay										
CLE Registration Fees	70,763		70,013							
Year-End Transfer										
Rollforward from previous FY										
Rollforward to Subsequent FY										
Overexpenditure/(Reversion)										
Lapsed Appropriation Cash Funds Exempt										
Lapsed Appropriation Reappropriated	(1,124,490)		(740,581)							
Other										
<b>TOTAL</b>	1,990,531		3,221,021		1,840,928		1,840,928		1,826,768	
GF	81,435									
CF					2,732		2,732			
RF	1,909,096		3,221,021		1,838,196		1,838,196			
<b>OPERATING AND LITIGATION:</b>					<b>1,840,928</b>		<b>1,840,928</b>		<b>1,826,768</b>	
General Fund									-	
Cash Funds					2,732		2,732		-	
Reappropriated					1,838,196		1,838,196		1,826,768	
<b>INDIRECT COST ASSESSMENT</b>	2,950,911		3,264,492		3,211,050		3,211,050		3,024,158	
General Fund										
Cash Funds			848,945		848,945		848,945		1,186,099	
Reappropriated Funds	2,950,911		2,415,547		2,362,105		2,362,105		3,024,158	
<b>INDIRECT COST ASSESSMENT TOTAL</b>	<b>2,950,911</b>		<b>3,264,492</b>		<b>3,211,050</b>		<b>3,211,050</b>		<b>3,024,158</b>	
General Fund										
Cash Funds			1,186,099		848,945		848,945		1,186,099	
Reappropriated Funds	2,950,911		2,078,393		2,362,105		2,362,105		1,838,059	
<b>Indirect Cost Assess. Reconciliation</b>										
Long Bill Appropriation	2,950,911		3,264,492				3,211,050			
Lapsed Appropriation Reappropriated Funds										
Other										

### SCHEDULE 3 - OPERATING PROGRAM DETAIL

#### Department of Law

#### LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 13		Actual FY 14		Approp FY 15		Estimate FY 15		Request FY 16	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
TOTAL	2,950,911		3,264,492				3,211,050			
<b>GRAND TOTALS LSSA (PS, OP, IND)</b>	<b>26,929,084</b>	<b>225.1</b>	<b>32,480,865</b>	<b>228.5</b>	<b>31,173,988</b>	<b>254.0</b>	<b>36,749,171</b>	<b>254.0</b>	<b>31,380,185</b>	<b>253.3</b>
General Fund	403,018		-		-		-		-	
General Fund Exempt	-		-		-		-		-	
Cash Funds	839,619		1,186,099		876,269		876,269		1,186,099	
Reappropriated Funds	25,686,447		31,294,765		30,297,719		35,872,902		30,194,086	

## SCHEDULE 4 - SOURCE OF FINANCING - DIRECT REVENUES

### Department of Law

### LEGAL SERVICES TO STATE AGENCIES

Item	Actual	Actual	Approp	Estimate	Request
	Actual FY 13	Actual FY 14	Approp FY 15	Estimate FY 15	Request FY 16
<b>Schedule 3 Total</b>	26,929,084	32,480,865	31,173,988	36,749,171	31,380,185
General Fund	403,018	-	-	-	-
General Fund Exempt	-	-	-	-	-
Cash Funds	839,619	1,186,099	876,269	876,269	1,186,099
Reappropriated Funds	25,686,447	31,294,765	30,297,719	35,872,902	30,194,086
Federal Funds	-	-	-	-	-
<b>CASH FUNDS</b>					
Various Sources of Cash				876,269	1,186,099
Fringe Benefits					
Service Charges from Others Non Exempt		864			
College Invest					
Colo State VA Center-Homelake					
Rifle State Nursing Home					
Nursing Homes		73,147			
PERA	583				
Colorado Student Loan Program	2,452	5,184			
Student Obligation Bond Authority					
Auraria Higher Education Ctr-Tabor Enterp					
CU Health Sciences Center	120				
Revenue - Lottery		75,031			
Division of Wildlife-Enterprise					
Cumbres & Toltec RR					
Colo School Dist Self Insurance PL					
Disability Insurance Trust	15,990				
SVC-State VA Center - Fitzsimons					
AHEC	28,273	10,717			
State Board of Agriculture	47,321				
DOHE Non Exempt		793,606			
School of Mines	196,702				
UNC	19,069				
Adams State College	175,443				
Metro State College	78,104	133,072			
Mesa State College	48,297				
Western State College	22,897				

## SCHEDULE 4 - SOURCE OF FINANCING - DIRECT REVENUES

### Department of Law

### LEGAL SERVICES TO STATE AGENCIES

Item	Actual	Actual	Approp	Estimate	Request
	Actual FY 13	Actual FY 14	Approp FY 15	Estimate FY 15	Request FY 16
Ft. Lewis College	92,808				
CCCOES	74,303	94,459			
Private VOC School	28,759				
CU Boulder	2,770	19			
CSU-Global Campus	40				
Authorities - State Comp.					
Student Loan	5,447				
Health Benefit Exchange Board	240				
DOLE Petroleum storage tank					
<b>Subtotal Cash Funds</b>	839,619	1,186,099		876,269	1,186,099
<b>REAPPROPRIATED FUNDS</b>					
Various Sources of Cash Exempt Administration				35,872,902	30,194,086
Agriculture	311,552	400,160			
Colorado Horse Develop,emt Authority					
Corrections	1,270,547	1,233,113			
Correctional Industries	2,759	11,117			
Education	243,592	435,328			
Governor's Office	433,876	928,885			
Public Health and Environment	2,393,330	2,840,844			
Higher Education	85,418	47,514			
Arts and Humanities Council					
Historical Society					
Health Care Policy and Financing	868,046	922,234			
Human Services	1,336,319	1,607,495			
Nursing Homes	65,524				
Judicial	181,220	284,681			
Law - POST	15,455	12,230			
General Assembly (GA)	5,542	1,821			

## SCHEDULE 4 - SOURCE OF FINANCING - DIRECT REVENUES

### Department of Law

### LEGAL SERVICES TO STATE AGENCIES

Item	Actual	Actual	Approp	Estimate	Request
	Actual FY 13	Actual FY 14	Approp FY 15	Estimate FY 15	Request FY 16
Labor & Employment	577,753	629,486			
Local Affairs	123,277	148,197			
Military Affairs	6,190	1,633			
Natural Resources	3,514,961	4,563,407			
Personnel	168,290	292,540			
Risk Management	2,211,194	3,211,943			
Public Safety	325,367	393,987			
Regulatory Agencies	7,383,603	8,969,467			
Revenue	2,564,746	3,169,613			
Revenue - Gaming	149,508	164,607			
Secretary of State	290,263	295,224			
Transportation	956,102	1,265,248			
Treasury	133,168	97,384			
State Fair Authority	21,928	37,515			
Lottery	25,829				
Interest	21,105				
Reimb prior year Exp		500			
Grant from Univ of Denver		10,000			
Transfer to Fund Litigation Mgmt Fund					
Fund Balance Addition	(16)	(681,405)			
Underearned Revenue					
<b>Subtotal Reappropriated Funds</b>	25,686,447	31,294,765		35,872,902	30,194,086
<b>Total Revenues - CF and RA</b>	<b>26,526,066</b>	<b>32,480,865</b>			